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(3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Proclamation 7337 of September 5, 2000

Health in Aging Month, 2000

By the President of the United States of America

A Proclamation

At the beginning of the 20th century, there were only 3 million older Americans; today, at the dawn of the 21st century, there are 34 million older citizens in our Nation, and we anticipate that, by the year 2050, one in four Americans will be 65 or older. We can be grateful that because of extraordinary advances in medicine, technology, and science, as well as increased public awareness of the importance of good nutrition and physical fitness, these older citizens are now living longer, more active, more productive lives than any previous generation.

The dramatic increase in the life span of our citizens, however, presents us with new challenges. While Americans are no longer dying from many of the diseases that affected previous generations, they must now contend with chronic conditions such as arthritis, osteoporosis, heart and lung disease, dementia, and stroke. These conditions are major causes of disability and death in our Nation, and their financial impact, in terms of medication, treatment, and long-term care costs, can be crushing. Older Americans now pay an average of more than $1,200 a year for prescription drugs, up from $559 in 1992, and that amount is projected to increase to more than $2,800 over the next decade. Millions of these older citizens have no prescription drug coverage at all, and millions more have expensive, inadequate coverage or are at risk of losing what coverage they have.

My Administration has taken a number of important actions to meet these new challenges. We have proposed a new affordable Medicare prescription drug benefit option available to all beneficiaries. This new benefit should ensure that every beneficiary, whether covered under Medicare, managed care, or a retiree health plan, will be able to access prescription drug coverage, including protection against catastrophic drug costs. We have also proposed an initiative to assist millions of older Americans and their families in meeting the financial challenges of long-term care, including a $3,000 tax credit for people with long-term care needs or their caregivers and improved equity in Medicaid eligibility for people living in home- and community-based settings rather than nursing facilities.

We are continuing our research efforts into chronic conditions that affect older Americans, such as Parkinson's disease, Alzheimer's disease, and diabetes, and I am proud that my proposed budget for fiscal 2001 includes a historic $1 billion increase in funding for the National Institutes of Health. And, most important, we remain committed to meeting the health and financial needs of older Americans by protecting and strengthening Social Security and Medicare and modernizing, improving, and reauthorizing the Older Americans Act.

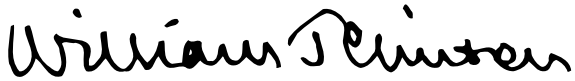
But there is still much to do if we are to sustain the health and quality of life of our increasingly aging population. We must raise awareness of the unique needs of older Americans and ensure that caregivers and health professionals are specially trained to treat the elderly. We must expand our research efforts into chronic conditions that affect older Americans. And we must improve health care financing, delivery, and administrative structures so that health plans and providers have the flexibility they need

to reduce the prevalence of chronic diseases, slow the rate of disability progression, and ensure the continuity and quality of care.

The health of older Americans varies from individual to individual and can depend on many factors, but we all recognize the critical importance of quality medical care, financial security, and a caring support system to sustaining a high quality of life. As our Nation's population ages, let us work together to ensure that these essential components of good health are available to every American.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2000 as Health in Aging Month, 2000. I urge government officials, health care providers, business and community leaders, and the American people to work together to promote healthy aging and to ensure that older citizens enjoy fulfilling, independent, and productive lives.

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



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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB56

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to update the criteria for determining ''reasonably adequate service'' levels for local exchange carriers and providers of specialized telecommunications service. This rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: This rule is effective September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens, under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 mandates that universally available and affordable telecommunications services, including advanced services, be made available to all US citizens whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telecommunications services to rural areas is to provide RUS funding for the full range of telecommunications services defined under the RE Act.

RUS regulations currently contain criteria for RUS to consider in determining whether telecommunications service is reasonably adequate (7 CFR 1735.12(c), Nonduplication). However, these

criteria do not recognize certain technological and other factors that are currently employed to determine adequate service. RUS is adopting separate criteria for local exchange carriers and providers of specialized telecommunications service. These revised criteria for determining ''reasonably adequate service'' are derived primarily from RUS policies related to telecommunications carriers generally, the Telecommunications Act of 1996, and FCC rules and regulations.

Under the Telecommunications Act of 1996, all incumbent local exchange carriers (ILECs) are automatically considered eligible telecommunications carriers (ETCs). An ETC is certified by the regulatory commission having jurisdiction, which makes it eligible to receive universal service support. Each State regulatory commission will name at least one ETC for every area. In return for universal service support, the ETC must make available an FCC-specified level of service throughout a designated area. Furthermore, an ETC must agree to advertise basic services in a specific area and offer service to everyone in that area.

If the borrower is a LEC, RUS will consider whether a borrower has been designated as an ETC when assessing loan feasibility. ETCs are eligible for universal service support and have accepted the obligations of being an ETC. ETC status, therefore, both enhances loan feasibility and promotes area wide coverage.

The Governor of RTB utilizes RUS policies in carrying out RTB's loan program. Therefore, these policy revisions would apply to loans made by RTB, as well.

Comments

RUS received comments from nine organizations regarding the proposed rule, published at 65 FR 33787 on May 25, 2000, and took all into consideration in preparing the final rule. A list of the commenters and comment summaries and responses follows:

1. Joint comments submitted from the National Rural Telecom Association, the Organization for the Protection and Advancement of Small Telecommunications Companies, the United States Telecom Association and the Western Rural Telephone Association, (the Associations).

2. The National Telephone Cooperative Association (NTCA).

3. GTE Service Corporation (GTE).

4. iSKY, Inc.

5. Rural Community Assistance Corporation.

6. City of Granite.

7. Umatilla County, Board of Commissioners.

8. Greater Eastern Oregon Development Corporation.

9. City of Heppner.

Comment: The Associations, as a general comment, stated that there was no need for RUS to try to conform its policies in administering the Rural Electrification Act of 1936 (RE Act) to the Telecommunications Act of 1996.

Reply: As RUS stated in the background section of this rule, the Telecommunications Act of 1996 and regulatory actions by the Federal Communications Commission (FCC) are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently. The changes contained in this rule are designed to facilitate, within the limits imposed by the RE Act, the deployment of advanced services in all of rural America—both the areas served by existing RUS borrowers and where necessary, rural areas that are underserved by non-RUS borrowers or receiving no service at all. The technologies used to provide telecommunications services continue to evolve rapidly and RUS is updating its regulations under the RE Act to meet the growing demand of rural service.

Comment: The Associations objected to the requirement that a borrower, in order to be eligible for RUS financing, be an eligible telecommunications carrier (ETC), commit to become an ETC, or commit to act as an ETC with respect to RUS' area coverage requirements. They stated that sections 201, 203, and 305 of the RE Act cover RUS eligibility requirements and therefore, ETC status should have no impact on RUS' determination of eligibility to borrow. The Associations disagreed with RUS' assertion that ETC status enhances loan feasibility and promotes area wide coverage. The Associations also objected to entities that, in the absence of ETC designation, can ''act'' or ''commit to act'' as ETCs to be eligible for RUS financing.

Reply: RUS has removed the provision regarding ETC status as an eligibility requirement for LECs. However, as noted in the general comment, RUS believes that the Telecommunications Act of 1996 and the RE Act should compliment each other to produce the goals set forth by Congress and the Administration for the deployment of advanced telecommunications services in rural America. ETC status advances the objectives of the RE Act by adding certain new requirements that enhance area coverage. ETC status, as noted by the Associations, allows a local exchange carrier to be eligible to receive universal service support. Given the high cost to serve areas where RUS borrowers construct plant, universal service funding is a very import component of loan feasibility. Without it, many areas would not be served due to exorbitant costs of providing such service and rates required to support that service. In addition, ETC status provides some assurance beyond RUS' loan feasibility study period that borrowers will continue to be eligible to receive universal service support throughout the life of the loan. ETC status also brings with it the responsibility to provide service to an entire, designated service territory and to advertise this availability. These two aspects of ETC status clearly enhance the ability of a borrower to repay its loans. Therefore, in making loans, RUS will take into consideration ETC status when determining loan feasibility.

Comment: NTCA recommended that RUS abandon use of ETC status as an eligibility requirement for a LEC to obtain financing from RUS and revert to the requirement that any borrower must be providing ''basic local exchange'' service in their rural study areas. NTCA commented that ''[a]dequate telephone service has always been basic local exchange service.''

Reply: As noted in response to the previous comment, RUS has removed the requirement that a LEC be designated an ETC. With regard to requiring all borrowers to provide ''basic local exchange'' service, RUS believes that modern telecommunications services are just as vital to rural areas as to the rest of the United States and there are entities providing these services in addition to LECs. RUS would eliminate these providers, and many of the services they could provide for rural America, if RUS made loans only to LECs. In today's high-tech market, a wide array of advanced services are being demanded by consumers, both urban and rural. Specialized service providers play an important role in the delivery of advanced services and RUS believes that financing should be available to such providers and not limited to just LECs. As RUS borrowers know, rural residents need more than just dial tone. RUS must ensure that its loan funds are used to provide a level of service—including all types of advanced services—beyond just basic local exchange service. The RE Act allows for

the financing of ''any communication service,'' not just basic local exchange service.

Comment: GTE stated that linking eligibility to ETC status would limit the participation in the telephone lending program by new entrants.

Reply: RUS is in fact encouraging the participation of new entrants in the program for the purpose of providing services not offered in the area to be served or where existing service is inadequate. As noted in the previous two comments, RUS has removed the requirement that a LEC be designated an ETC and will consider whether a borrower is an ETC when determining loan feasibility.

Comment: The Associations objected to extending eligibility to a ''separate class'' of borrowers referred to in the regulation as entities providing specialized telecommunications services. They stated that '' 'specialized telecommunications service' is an impermissible non-statutory definition of telephone service.'' They further expressed concern that this would permit loans to multiple borrowers providing telephone service in the same service area, which, they state, would effectively circumvent the statutory prohibition against those RUS loans which would duplicate lines, facilities or systems providing reasonably adequate service.

Reply: The RE Act definition of ''telephone service'' is sufficiently broad to allow RUS to finance special services (such as Internet service, pager service, etc.), mobile service, and wireline service. In addition, neither the definition nor any other provision of the RE Act prevents the RUS from financing more than a single provider of nonduplicating services in a specific area. Specialized telecommunications service, as defined in the regulation, means any telephone service other than telephone exchange service, exchange access, or mobile telecommunications service. This definition clearly recognizes the difference between wireline exchange access, mobile service, and specialized service. RUS believes that specialized services are clearly different from other forms of telecommunications services and they are not duplicative because the different services are used for different purposes; use of one does not displace use of the other.

Comment: NTCA stated that, because RUS has not acknowledged that wireline, wireless, and specialized telecommunications carriers can provide the ''same telecommunications service'' as an incumbent rural LEC, the proposed rule allows for multiple RUS-financed carriers offering the same or equivalent services in the same competing territories. They stated that the new rule leaves the door open for a RUS-financed rural LEC providing adequate telephone and broadband services to incur revenue losses as a result of a new competing RUS-financed carrier offering basic or advanced services that duplicate a LEC's service in a rural study area. NTCA added that RUS should avoid lending policies that create incentives for borrowers to compete against each other.

Reply: Again, RUS believes that wireline, wireless, and specialized are distinct services and do not duplicate each other. In fact, wireless and wireline services co-exist in many places in today's market, both providing different services and neither replacing the other. Therefore, entry of a mobile or specialized service provider into a wireline-only service area should pose no significant risk or duplication. If the existing mobile service being provided is adequate, RUS cannot finance the same service in the same territory offered by another carrier. In addition, as a lender, RUS is aware of its responsibilities regarding the security for its loans. In the final rule 7 CFR part 1735 published in the **Federal Register** on July 11, 2000, at 65133, RUS clarified that it would generally not make a loan to another entity to provide the same service (*i.e.,* wireline where wireline exists) already being provided by an RUS borrower unless the borrower is unable to meet its obligations to RUS. As a Federal lender, it is RUS' responsibilities to ensure, to the best of its ability, security for all outstanding and future loans, and to encourage telecommunications services in rural areas.

Comment: The Associations recognized the need for RUS to update the criteria used to determine whether service is reasonably adequate. However, they stated that RUS should rely on a single standard for determining whether telephone service is reasonably adequate to all providers of telephone service. In addition, the Associations assert that RUS does not have authority to determine the affordability of any type of service.

Reply: The criteria used in determining whether service is reasonably adequate are designed to ensure that no rural area is trapped with inferior, substandard service. As stated previously, there is a distinction between wireline, mobile, and special telecommunications services. It is prudent, therefore, to have separate criteria for determining adequate service for each type of service being offered. The RE Act requires the Administrator of RUS to determine that a loan will not result in the ''duplication of lines, facilities, or systems, providing reasonably adequate services'' where a state does not have the authority to issue a certificate of convenience and necessity.

If the existing service is not reasonably adequate, an RUS loan to improve service does not result in duplication. Since the types of service mentioned above are distinct, they require an adequacy definition that is unique to that specific type of service. With regard to the affordability of rates, RUS believes that service available only at extremely high rates that render it inaccessible to subscribers in rural areas is not adequate. The evaluation of whether rates are affordable to rural subscribers is made only to determine whether RUS will make a loan in a particular situation and is clearly different from the regulatory judgement of whether rates are reasonable.

Comment: The Associations asserted that the proposed rule changes should not be made applicable to the Rural Telephone Bank (RTB), stating that injecting ''new classes of stockholders'' into existing stockholders would impede accelerated privatization and potentially harm the legitimate interests of the existing equity owners of the Bank.

Reply: Concurrent lending (whereby a borrower applying for a loan from RUS must receive part of its funding requirement from the RTB) was mandated by Congress through passage of the Rural Electrification Loan Restructuring Act of 1993. Today, the RTB operates as an agency of the Federal government, fulfilling its role as a supplemental lender to those entities eligible to borrow from RUS. All rules and regulations governing the processing and purposes of loans for RUS borrowers also apply to the RTB. No ''new classes'' of borrowers would result from this rule. New borrowers would purchase Class B stock in the same manner as existing borrowers and they would receive the same privileges associated with stock ownership. Privatization of the RTB, as proposed by the President's budget, will benefit all borrowers, whatever types of service they provide. It should be noted that the rate of privatization rests in the control of the RTB Board of directors. However, in recent years, that control over the decision to privatize or not, has been limited by Congressional appropriations language that effectively removes the Board's power to privatize the RTB.

Comment: GTE objected to the criterion that plant be capable of

carrying Internet access at speeds of at least 28.8 Kbps in determining whether service is reasonably adequate. They stated that such a requirement would dictate significant upgrades and modifications to existing networks at substantial costs. For instance, they stated that loops that are loaded and exceed 18,000 feet would have to be redesigned for service through a remote switch unit or digital loop carrier (DLC). In addition, they stated that end-user and Internet service provider equipment beyond the control of the LEC could have a negative effect on the ability to achieve the prescribed speed.

Reply: All RUS financing provided since 1993 must provide for the construction of telecommunication plant that is consistent with provision of various broadband services. Specifically, the Rural Electrification Loan Restructuring Act of 1993 limited RUS to making loans only to borrowers that were participating in statewide telecommunications modernization plans. RUS provided the essential minimum requirements for the development of such plans (see 7 CFR 1751.100 *et seq.*). This included building plant that was capable of evolving toward broadband deployment and the elimination of loaded plant in new construction. RUS cannot set a lower standard for determining ''adequate service'' for new entrants.

Comment: NTCA, quoting the National Exchange Carriers Association's $10.9 billion estimate for completing upgrades for broadband capability throughout NECA's rural study areas, stated that RUS should reserve its funding to complete the unfinished business of bringing broadband to rural areas.

Reply: As noted in the previous reply, RUS has been providing funding to further the deployment of broadband services in rural areas. RUS does not believe, in view of the many ways now available to provide telecommunications services, that funding to provide these services should be limited to just LECs. The investment needed, as noted in the comment, will be formidable. However, by targeting areas where service is nonexistent or inadequate, RUS hopes to use its loan funds to, within the limits of the RE Act, finance broadband services where they are needed the most.

Comment: iSKY requested that RUS modify its rule to clarify that satellite-based specialized communications services capable of covering broad geographic areas are not automatically precluded from RUS funding on the basis of duplication of services.

Reply: RUS is ''technology neutral''—it lends to finance the service to be provided, not the technology used to provide that service. Where no service currently exists, or where existing service is inadequate, RUS may fund a carrier to provide such service, delivered by any means. RUS will work with any provider to try to devise a feasible method for providing the service to rural areas. Where service is to be provided to both rural and nonrural areas, see 7 CFR 1735.13.

Comment: The Rural Community Assistance Corporation, City of Granite, Umatilla County Board of Commissioners, Greater Eastern Oregon Development Corporation, and City of Heppner all expressed strong support for the proposed changes to the regulations. Citing the need for advanced telecommunications in rural communities as the single most promising opportunity to prosper and grow, these organizations applauded RUS' efforts to help ensure that rural America receives the same services and benefits as its urban counterparts.

Reply: RUS appreciates the support and involvement of the commenters' organizations in bringing advanced telecommunications technologies to rural America.

Good cause is shown to make this rule effective on the date of publication in the **Federal Register** because any further delay would contribute to denying benefits to residents in rural areas. This rule is part of an Administration initiative to ensure that rural areas receive access to all types of telecommunications services—services already available to urban residents. Part of the intent of that initiative is to provide funding, this fiscal year (fiscal year 2000), to entities to provide advanced telecommunications service where that service does not exist or is inadequate. In order to do that, applicants must have time to prepare and submit applications in accordance with this and other applicable RUS regulations; RUS must also have adequate time to process and approve eligible applications. A delay in the effective date of this rule of 30 days, coupled with application preparation, review and processing times, would undermine the ability to provide funding this fiscal year, thereby denying benefit to rural residents.

7 CFR part 1735 was previously amended through publication in the **Federal Register** on July 11, 2000, at 65133. This final rule further amends 7 CFR part 1735, as amended by those amendments published July 11, 2000.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, revise the definition of Mobile telecommunications service and add the following definitions in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

* * * * *

Local exchange carrier (LEC) means an organization that is engaged in the provision of telephone exchange service or exchange access.

* * * * *

Mobile telecommunications service means radio communication voice service between mobile and land or fixed stations, or between mobile stations.

Modernization Plan (State Telecommunications Modernization Plan) means a State plan, which has been approved by RUS, for improving the telecommunications network of those telecommunications providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR 1751, subpart B.

* * * * *

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

* * * * *

Specialized telecommunications service means any telephone service other than telephone exchange service, exchange access, or mobile telecommunications service.

* * * * *

Telecommunications means the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

Telephone exchange service means: (1) Service provided primarily to fixed locations within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or

(2) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

* * * * *

3. Revise § 1735.10(c) to read as follows:

§ 1735.10 General.

* * * * *

(c) A borrower receiving a loan to provide mobile telecommunications services or special telecommunications services shall be considered to be participating in the state telecommunications plan (TMP) with respect to the particular loan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan, except that a borrower must comply with any portion of a TMP made applicable to the borrower by a state commission with jurisdiction.

* * * * *

4. In § 1735.12, revise paragraph (c) and add paragraph (f) to read as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service provided by a local exchange carrier (LEC) in determining whether such service is reasonably adequate:

(1) The LEC is providing area coverage as described in § 1735.11.

(2) The LEC is providing all one-party service or, if the State commission has mandated a lower grade of service, the LEC is eliminating that service in accordance with the requirements of the Telecommunications Act of 1996, 47 U.S.C. 151 *et seq.*

(3) The LEC's network is capable of providing transmission and reception of data at a rate of at least 1,000,000 bits per second (1 Mbps) with reasonable modification to any subscriber who requests it.

(4) The LEC makes available custom calling features (at a minimum, call waiting, call forwarding, abbreviated dialing, and three-way calling).

(5) The LEC is able to provide E911 service to all subscribers, when requested by the government entity responsible for this service.

(6) The LEC is able to offer local service with blocked toll access to those subscribers who request it.

(7) The LEC's network is capable of accommodating Internet access at speeds of at least 28,800 bits per second (28.8 Kbps) via modem dial-up from any subscriber location.

(8) There is an absence of frequent service interruptions.

(9) The LEC is interconnected with the public switched network.

(10) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(11) Services are provided at reasonably affordable rates.

(12) Any other criteria the Administrator determines to be applicable to the particular case.

* * * * *

(f) RUS shall consider the following criteria for any provider of a specialized telecommunications service in determining whether such service is reasonably adequate:

(1) The provider of a specialized telecommunications service is providing area coverage as described in § 1735.11.

(2) An adequate signal strength is provided throughout the largest practical portion of the service area.

(3) There is an absence of frequent service interruptions.

(4) The quality and variety of service provided is comparable to that provided in nonrural areas.

(5) The service provided complies with industry standards.

(6) No Federal, State, or local regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Services are provided at reasonably affordable rates.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

Dated: September 5, 2000.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 00–23092 Filed 9–7–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–183–AD; Amendment 39–11890; AD 2000–18–05]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes, that requires modification of the alerting capability of the anti-icing advisory system to improve crew awareness of icing conditions, replacement of the median wing de-icing boots with extended de-icing boots, and installation of de-icing boots on the metallic wing leading edge. 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 reduce the degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane.

DATES: Effective October 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57787). That action proposed to require modification of the alerting capability of the anti-icing advisory system to improve flight crew awareness of icing conditions, replacement of the median wing de-icing boots with extended de-icing boots, and installation of de-icing boots on the metallic wing leading edge.

Explanation of Relevant Service Information

Aerospatiale has issued Revision 2 of the following Avions de Transport Regional Service Bulletins:

Service bulletin	Date	Model
ATR42–30–0064	October 1, 1999	ATR42
ATR42–30–0063	October 1, 1999	ATR42
ATR42–30–0065	October 25, 1999	ATR42
ATR72–30–1032	October 1, 1999	ATR72
ATR72–30–1033	October 1, 1999	ATR72
ATR72–30–1034	October 19, 1999	ATR72

The service bulletins that were cited in the proposed AD as the appropriate sources of service information were all at Revision 1. The procedures described in Revisions 1 and 2 are essentially the same; Revision 2 was issued to correct certain technical errors. Accomplishment of the actions specified in Revision 2 of the service bulletins is intended to adequately address the identified unsafe condition.

Comments

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

Support for the Modification Requirement

One commenter agrees that the modifications specified in the proposed AD ''represent a step forward in providing a higher level of protection for an aircraft operating in icing conditions or with airframe ice accretions.''

Request To Revise Intent of AD

Two commenters request that certain language of the proposed AD be revised to more accurately explain the scope and purpose of the proposed actions.

1. One commenter requests that the proposed AD be revised to indicate that the proposed modifications represent only improvements over the present system, not a solution to the degradation of lift and drag in prolonged exposures to severe icing.

2. This same commenter requests a revision of certain portions of the proposed AD that state that the proposed modifications are intended to ''prevent degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane.'' The commenter notes that, ''if degradations in lift and drag are being prevented, the aircraft is not in severe icing.''

3. Another commenter requests that the proposed AD be revised to reflect that the actions are intended to ''prevent degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in wing stall.''

4. This same commenter disagrees with certain statements in the Discussion section of the proposed AD, and proposes the following revision:

> ''The DGAC advises that the existing median wing de-icing boots may not be adequate to protect the airplane during prolonged exposure to severe icing conditions, outside of those for which the airplane has been certificated. Such prolonged exposure could produce degradation of lift and drag characteristics which could result in wing stall.
>
> In addition, DGAC reports that in several instances, crews have failed to activate the de-icing boots, despite the fact that ice accretion had been detected by the Anti-icing Advisory System (AAS). This failure could indicate that the current design of the AAS may not provide adequate alerting signal to the flight crew in case of lack of awareness or vigilance.''

The commenter requests this revision of the Discussion section for the following reasons:

- The commenter states that, ''[p]riority should be given to the median de-icing boot extension to further enhance the airplane's robustness in case of prolonged severe icing encounters.'' [The FAA infers that the commenter objects to the order in which the issues were presented in the proposed AD (the icing light logic problem was discussed before the boot modification), although the issues were presented in no particular order.]
- The modification of the ICING light flashing logic should be considered only a reinforcement of crew awareness and vigilance, considering the importance of human factors during flight in severe icing conditions.
- The proposed AD states that failure to activate the boots may indicate that the AAS may not provide adequate alerting ''in all instances of ice accretion.'' The commenter suggests that this could be interpreted to mean that the AAS system could malfunction under some ice accretion conditions. The commenter points out that the AAS modification addresses only its warning logic, not its detection capability.
- In line with its policy to avoid relying only on procedures to address safety issues, the DGAC mandated the modifications proposed in the NPRM.

FAA's Response: Clarification of Intent

In response to these comments, the FAA agrees that clarification of the intent of the AD may be necessary. The actions proposed by this AD are intended to enhance the alerting capability and performance of the airplane ice protection system. Accomplishment of these actions will result in a more robust icing protection system that will provide an increased level of safety during flight in icing conditions.

It was not the FAA's intent to suggest that the new de-icing boots proposed by this AD would provide a permanent solution for prolonged flight in severe icing conditions. The new de-icing boots are not FAA-approved for operation in severe icing, although they represent product improvements that may provide some benefit during an inadvertent encounter with a severe icing environment. The FAA Aeronautical Information Manual defines ''severe icing'' as follows:

> ''The rate of [ice] accumulation is such that the de-icing/anti-icing equipment fails to reduce or control the hazard. Immediate flight diversion is necessary.''

It is therefore clear that no airplane is approved for operations in severe icing conditions, and, if such conditions are inadvertently encountered, an immediate diversion is the only practical means to deal with the hazard at this time. The FAA and the aviation industry are working to define a ''severe icing envelope,'' *i.e.,* icing conditions

that may be outside the present certification envelope (as required by Appendix C of part 25 of the Federal Aviation Regulations). Until the FAA and the aviation industry agree on the definition of this new severe icing envelope and a means to operate safely within it, the FAA is not prepared to consider approval of operations in such conditions. Therefore, the final rule has been revised (in several places) to state that the required actions are intended to reduce (rather than ''prevent'') the degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane.

The DGAC has advised the FAA of a few instances in which flightcrews failed to activate the de-icing boots, despite the fact that ice accretion had been detected by the AAS. As a result, the manufacturer has developed an enhancement of the alerting capability of the AAS system that reinforces flightcrew awareness of icing conditions. This modification results in the ICING light on the instrument panel continuing to flash as long as both level 2 and level 3 ice protection systems are not selected, once ice accretion has been detected by the electronic ice detection system. [Note: Level 1 (windshield heat and pitot-probe heat) is always on for every flight. Level 2 is the ''anti-icing'' mode (propeller and elevator/rudder horn heat, side window heat, and engine ice protection). Level 3 is the ''de-icing'' mode (airframe de-icing boots activated), and is on when level 2 is still in effect.]

In an effort to further enhance safety, the DGAC has also mandated a modification that extends the chord-wise coverage of the median wing boots. That mandate [French airworthiness directives 1999–165–077(B) (for Model ATR42 series airplanes) and 1999–166–041(B) (for Model ATR72 series airplanes); both dated April 21, 1999] prompted the issuance of the proposed AD. The new boots extend farther back on both the upper and lower surfaces of the wing. These extended boots have not been shown to provide any measurable improvement in the airplane's ability to operate safely in severe icing conditions, and are not offered by Aerospatiale in order to gain any operational advantage in these severe conditions. However, if the flightcrew inadvertently encounters severe icing, these extended boots may increase the level of safety while the flightcrew takes the required steps to immediately exit the severe icing conditions.

The FAA agrees that rewording the Discussion section of the proposed AD might clarify the purpose and anticipated benefit of the modifications; however, the Discussion section is not restated in a final rule.

Request To Revise Applicability

One commenter requests that the applicability of the proposed AD be revised to exclude airplanes on which the proposed modifications have been accomplished.

The FAA concurs. To better define the airplanes affected by this AD, the FAA has revised the applicability to exclude airplanes on which certain modifications have been accomplished.

Request To Require Revised Service Bulletins

One commenter has identified certain minor technical errors in Revision 1 of the service bulletins that would ''prevent proper operation of the entire modification'' if accomplished strictly in accordance with the accomplishment instructions. (Revision 1 was cited in the proposed AD as the appropriate source of service information.) The commenter reports that it was advised by the manufacturer that those technical issues will be corrected in the next service bulletin revisions.

The FAA partially concurs. Revision 2 of the service bulletins incorporates the corrected information. However, the manufacturer advises that clarification and correct instructions were provided so that the modification can be accomplished with the Revision 1 instructions. The manufacturer further advises that no additional work should be necessary for an airplane modified in accordance with Revision 1. Therefore, the final rule has been revised to require accomplishment of the modification in accordance with Revision 2, and to include a note that credits operators for prior accomplishment in accordance with Revision 1.

Conclusion

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

Cost Impact

The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD.

The replacement of existing de-icing boots and the new installation of de-icing boots will take approximately 75 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,500 per airplane. Based on these figures, the cost impact of the replacement/installation required by this AD on U.S. operators is estimated to be $1,400,000, or $10,000 per airplane.

The modification of the alerting capability of the Anti-icing Advisory System (AAS) will take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $532,000, or $3,800 per airplane.

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–18–05 Aerospatiale: Amendment 39–11890. Docket 99–NM–183–AD.

Applicability: The following airplanes, certificated in any category:

—Model ATR42 series airplanes, excluding those modified in accordance with Aerospatiale Matra ATR Modifications 4993, 4998, and 5008

—Model ATR72 series airplanes, excluding those modified in accordance with Aerospatiale Matra ATR Modifications 4994, 4997, and 5008

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

Compliance: Required as indicated, unless accomplished previously.

To reduce the degradation of lift and drag characteristics in prolonged severe icing exposure, which could result in loss of lift and consequent reduced controllability of the airplane, accomplish the following:

Boot Replacement/Installation

(a) Within 30 months after the effective date of this AD, replace the median wing de-icing boots with extended de-icing boots in accordance with Avions de Transport Regional Service Bulletin ATR42–30–0063, Revision 2, dated October 1, 1999 (for Model ATR42 series airplanes), or ATR72–30–1032, Revision 2, dated October 1, 1999 (for Model ATR72 series airplanes); as applicable.

(b) Within 30 months after the effective date of this AD, install de-icing boots on the metallic wing leading edge in accordance with Avions de Transport Regional Service Bulletin ATR42–30–0064, Revision 2, dated October 1, 1999 (for Model ATR42 series airplanes), or ATR72–30–1033, Revision 2, dated October 1, 1999 (for Model ATR72 series airplanes); as applicable.

Modification

(c) Within 30 months after the effective date of this AD, modify the ICING light flashing logic of the Anti-icing Advisory System (AAS), in accordance with Avions de Transport Regional Service Bulletin ATR42–30–0065, Revision 2, dated October 25, 1999 (for Model ATR42 series airplanes), or Avions de Transport Regional Service Bulletin ATR72–30–1034, Revision 2, dated October 19, 1999 (for Model ATR72 series airplanes); as applicable.

Note 2: Accomplishment of the boot replacement, boot installation, and modification is also considered acceptable for compliance with the applicable requirements of paragraphs (a), (b), and (c) of this AD, if accomplished in accordance with Revision 1 of the following Avions de Transport Regional service bulletins: (For Model ATR42 Series Airplanes) ATR42–30–0063, May 7, 1999, ATR42–30–0064, May 7, 1999, ATR42–30–0065, May 17, 1999 (For Model ATR72 Series Airplanes) ATR72–30–1032, May 7, 1999, ATR72–30–1033, May 7, 1999, ATR72–30–1034, May 17, 1999.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with the following Avions de Transport Regional Service Bulletins, as applicable:

Service bulletin and date	Page numbers	Revision level shown on the page	Date shown on page
ATR72–30–1032, Revision 2, October 1, 1999	1–10, 14–16, 33, 34, 43	2	October 1, 1999.
	11–13, 17–32, 35–42, 44, 45	1	May 7, 1999.
ATR72–30–1033, Revision 2, October 1, 1999	1, 2, 6, 7, 8, 15	2	October 1, 1999.
	3–5, 9–14, 16–43	1	May 7, 1999.
ATR72–30–1034, Revision 2, October 19, 1999	1, 2, 4, 8–31	2	October 19, 1999.
	3	1	May 17, 1999.
	5, 6, 7	(1)	February 2, 1999.
ATR42–30–0063, Revision 2, October 1, 1999	1–5, 9, 10, 13, 14, 16, 18, 19, 37, 38, 43, 47	2	October 1, 1999.
	6–8, 11, 12, 15, 17, 20–36, 39–42, 44–46, 48, 49	1	May 7, 1999.
ATR42–30–0064, Revision 2, October 1, 1999	1–5, 8–10, 12–14, 20, 21, 35–54, 59, 60	2	October 1, 1999.
	6, 7, 11, 15–19, 22–34, 55–58, 61	1	May 7, 1999.
ATR42–30–0065, Revision 2, October 25, 1999	1–5, 7–52	2	October 25, 1999.
	6	1	May 17, 1999.

[1] Original.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–165–077(B) and 1999–166–041(B), both dated April 21, 1999.

(g) This amendment becomes effective on October 13, 2000.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22908 Filed 9–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–54–AD; Amendment 39–11892; AD 2000–18–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, that requires replacement of the transformer rectifier units (TRU) in the avionics compartment with new, improved TRU's. 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 failure of the TRU's. Failure of multiple TRU's could result in loss of the thrust reversers, autothrottle, flaps, and various systems (wing/cockpit window anti-ice, trim tank pumps, and windshield wipers) on the airplane; or incorrect information displayed to the flight crew.

DATES: Effective October 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A300–600, and A310 series airplanes was published in the **Federal Register** on April 19, 2000 (65 FR 20922). That action proposed to require replacement of the transformer rectifier units (TRU) in the avionics compartment with new, improved TRU's.

Later Service Bulletin Revisions

Airbus has issued Service Bulletins A300–24–0089, A300–24–6068, and A310–24–2077, all Revision 01, all dated February 10, 2000. The original releases of these service bulletins were cited in the proposed AD as the appropriate source of service information for the actions required by the AD. These later revisions of the service bulletins are essentially equivalent to the previous revisions; however, the interchangeability code has been updated. The AD has been revised to reference the later service bulletin revisions as the appropriate source of service information. A NOTE also has been added to give credit to operators that may have accomplished the actions required by this AD in accordance with the original version of the service bulletins.

Comments Received

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

Request To Extend Compliance Time

Three commenters request that the compliance time specified in the proposed AD for the TRU replacements be extended to September 30, 2001, which is the time mandated by the related French airworthiness directive 1999–435–296(B), dated November 3, 1999. One commenter, the TRU vendor, states that the last batch of parts will not be available until December 2000, and the subsequent lead time for modification of the TRU's is 6 to 8 months. Another commenter states that more than 50 percent of TRU's installed on U.S.-registered airplanes are at earlier amendment levels, and these TRU's will require significantly more parts and work hours to accomplish the additional modifications necessary to bring the TRU's to later amendment levels.

Another commenter, the airplane manufacturer, states that there has been no overall decrease in TRU reliability for most operators, and there has been no recent increase in double TRU failures. However, a limited number of operators have experienced a lower mean-time-between-failure (MTBF) rate for the TRU over the last several years. Therefore, the commenter advises that the Master Minimum Equipment List (MMEL) is being revised, to reduce the amount of time in which dispatch is allowed with one TRU inoperative. With the MMEL restriction in place as an interim measure, and given the lack of availability of parts, the commenter proposes extension of the compliance threshold to September 30, 2001.

The FAA partially concurs. The FAA has verified that the lead time for modifying the TRU's will exceed the proposed compliance time of 6 months after the effective date of this AD. In light of this situation, and in consideration of the more restrictive MMEL requirements, the FAA has determined that extending the compliance time as suggested will accommodate the time necessary for affected operators to replace the TRU's, without adversely affecting safety. However, there is no direct analytical relationship identified between the suggested calendar date of September 30, 2001, and the amount of time necessary to accomplish the required actions. Therefore, rather than specifying a calendar date, the FAA has revised the compliance time to 12 months after the effective date of this AD. This threshold should provide operators with time in which to accomplish the requirements of the AD approximately equivalent to the suggested calendar date.

Request To Revise Cost Information

One commenter states that, although the proposed AD provides an estimate of 2 work hours per airplane to accomplish the TRU replacements, about 12 to 16 work hours will actually be required to modify each TRU prior to installation on the airplane. The commenter's work hour estimate includes the time necessary to revise the TRU to later amendment levels (if not already included), prior to modifying the TRU for installation as required by this AD. The commenter also notes that the AD should clarify that the costs of modification to later amendment levels will be borne by the operators. Additionally, the commenter states that only the modification parts provided by the manufacturer will be at no cost to the operators if modification of the

TRU's is accomplished at the vendor's (AUXILEC) facilities.

The FAA's intent with regard to the work hour estimate was to provide an approximation of the time required for replacement of all TRU's on an airplane. The estimate was not intended to include all work hours necessary for prior modification of certain TRU's to the required configuration. However, the FAA does not object to noting that additional work hours may be required for accomplishment of such modifications. The cost impact information, below, has been revised accordingly. Additionally, the statement regarding cost of modification parts has been revised to clarify that the statement applies only to modification parts provided by the manufacturer.

Conclusion

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

Cost Impact

The FAA estimates that 122 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Additional work hours may be necessary for prior modification of the TRU's. Required parts from the manufacturer will be provided by the manufacturer at no cost to the operators if modification of the TRU's is accomplished at the vendor's (AUXILEC) facilities; otherwise the required parts will cost approximately $253 per TRU. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $120 and $1,132 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–18–07 Airbus Industrie: Amendment 39–11892. Docket 2000-NM–54–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; certificated in any category; equipped with AUXILEC transformer rectifier units (TRU) having part number (P/N) F11QB3121.

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 failure of multiple TRU's, which could result in loss of the thrust reversers, autothrottle, flaps, and various systems (wing/cockpit window anti-ice, trim tank pumps, and windshield wipers) on the airplane; or incorrect information displayed to the flight crew; accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the TRU's in the avionics compartment with new, improved TRU's, in accordance with Airbus Service Bulletin A300–24–0089 (for Model A300 series airplanes), A300–24–6068 (for Model A300–600 series airplanes), or A310–24–2077 (for Model A310 series airplanes); all Revision 01, all dated February 10, 2000; as applicable.

Note 2: Accomplishment of TRU replacements prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–24–0089, dated March 4, 1998; A300–24–6068, dated January 28, 1998; or A310–24–2077, dated January 21, 1998; as applicable; is acceptable for compliance with paragraph (a) of this AD.

Note 3: The Airbus service bulletins reference AUXILEC Service Bulletin F11QB3121–24–007, dated February 2, 1998, as an additional source of service information for accomplishing the replacement required by this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin

A300–24–0089, Revision 01, dated February 10, 2000; Airbus Service Bulletin A300–24–6068, Revision 01, dated February 10, 2000; or Airbus Service Bulletin A310–24–2077, Revision 01, dated February 10, 2000; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA,

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

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–435–296(B), dated November 3, 1999.

(e) This amendment becomes effective on October 13, 2000.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22907 Filed 9–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–75–AD; Amendment 39–11816; AD 2000–14–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 727 series airplanes. That AD supersedes an earlier airworthiness directive to require repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section; repair, if necessary; and modification of the rear spar web. This document corrects the effective date of the earlier, superseded AD, which was stated incorrectly in the existing AD. This correction is necessary to ensure that operators are advised of the correct effective date of the original AD, specifically as it affects the compliance time for a certain paragraph of this AD.

DATES: Effective August 17, 2000.

The incorporation by reference of Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 17, 2000 (65 FR 43228, July 13, 2000).

The incorporation by reference of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 29, 1997 (62 FR 65355, December 12, 1997).

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On July 3, 2000, the Federal Aviation Administration (FAA) issued AD 2000–14–07, amendment 39–11816 (65 FR 43228, July 13, 2000), which applies to certain Boeing Model 727 series airplanes. That AD supersedes an earlier airworthiness directive, AD 97–25–15, amendment 39–10239 (62 FR 65355, December 12, 1997), to require repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section; repair, if necessary; and modification of the rear spar web. That AD was prompted by several reports of fuel leakage due to cracking of the rear spar web of the wing center section. The actions required by that AD are intended to prevent cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire.

Need for the Correction

The FAA has found that the effective date associated with the earlier, superseded AD (AD 97–25–15) was stated incorrectly in paragraph (a) of AD 2000–14–07. The compliance time in paragraph (a) of AD 2000–14–07, which is a restatement of paragraph (a) of AD 97–25–15, reads, ''Prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after December 27, 1997 (the effective date of AD 97–25–15, amendment 39–10239), whichever occurs later.'' The correct effective date of AD 97–25–15 is December 29, 1997.

The FAA has determined that a correction to AD 2000–14–07 is necessary. The correction will ensure that operators are advised of the correct effective date of the original AD, particularly as its affects the compliance time for paragraph (a) of the AD.

Explanation of Additional Error

In AD 2000–14–07, Item 2. under the section ''Adoption of the Amendment'' reads, ''Section 39.13 is amended by removing amendment 39–10239 (62 FR 65355, December 29, 1997).'' The referenced date should be December 12, 1997, which is the date that AD 97–25–15 was published in the **Federal Register**. This section is not restated in this document; therefore, no change to this AD is necessary in this regard.

Correction of Publication

This document corrects the error in paragraph (a) and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains August 17, 2000.

Since this action only corrects a calendar date that was referenced incorrectly, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–14–07 Boeing: Amendment 39–11816. Docket 99–NM–75–AD.

Applicability: Model 727 series airplanes having line numbers 858 through 864 inclusive, 867 through 869 inclusive, 872 through 883 inclusive, and 885 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(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 cracking of the rear spar web, which could permit fuel leakage into the

airflow multiplier, and could result in an electrical short that could cause a fire, accomplish the following:

Restatement of the Requirements of AD 97–25–15

Inspections

(a) Prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after December 29, 1997 (the effective date of AD 97–25–15, amendment 39–10239), whichever occurs later: Accomplish the inspections specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. For purposes of the AD, the access panels specified in the alert service bulletin need not be removed; the access panels need only be opened.

Note 2: The fuel tank of the wing center section may be filled with fuel to assist in detecting cracking or fuel leakage during the accomplishment of the visual inspections required by this AD.

(1) Perform a visual inspection using a borescope or mirror to detect cracking of the rear spar web and/or fuel leakage of the wing center section between right body buttock line (BBL) 40 and left BBL 40, in accordance with Part I of the Accomplishment Instructions of the service bulletin. Thereafter, repeat this inspection at intervals not to exceed 300 flight cycles. Or

(2) Perform an ultrasonic and high frequency eddy current (HFEC) inspection to detect cracking of the rear spar web of the wing center section between right BBL 40 and left BBL 40, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Thereafter, repeat this inspection at intervals not to exceed 3,000 flight cycles.

Repair

(b) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected between right BBL 40 and left BBL 40 near the upper machined land radius, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions in Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected that is outside the area specified in paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Modification

(d) Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish an ultrasonic and HFEC inspection in accordance with the requirements of paragraph (a)(2) of this AD.

(1) If no cracking is detected, prior to further flight, modify the rear spar web of the center section of the fuel tank between right BBL 40 and left BBL 40, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair and modify the rear spar web in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(e)(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 97–25–15, amendment 39–10239, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the limitations specified in paragraphs (f)(1) through (f)(6) of this AD are included in the special flight permit:

''(1) Required trip and reserve fuel must be carried in the No. 1 and No. 3 outer wing tanks.

(2) Wing center tank No. 2 must be empty of fuel.

(3) The fuel system must be checked for normal operation prior to flight by verifying that all boost pumps are operational; configuring the fuel system by turning on all boost pumps in the No.'s 1 and 3 outer wing tanks and by opening all crossfeed valve selectors; and by confirming that fuel is not bypassing tank No. 2 check valves by observing that there is not leakage into tank No. 2.

(4) Maintain a minimum of 5,300 pounds of fuel in tanks No. 1 and No. 3 to prevent uncovering the fuel bypass valve.

(5) The fuel quantity indication system must be operational in all three tanks.

(6) The effects of loading fuel only in the wing tanks on the airplane weight and balance must be considered and accounted for.''

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997; or Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999.

(1) The incorporation by reference of Boeing Service Bulletin 727–57A0182, Revision 1, dated February 25, 1999, was approved previously by the Director of the Federal Register as of August 17, 2000 (65 FR 43228, July 13, 2000).

(2) The incorporation by reference of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997, was approved previously by the Director of the Federal Register as of December 29, 1997 (62 FR 65355, December 12, 1997).

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

Effective Date

(h) The effective date of this amendment remains August 17, 2000.

Issued in Renton, Washington, on September 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–23042 Filed 9–7–00; 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; Chlortetracycline and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma,

Inc. The NADA provides for use of approved, single-ingredient chlortetracycline (CTC) and bacitracin methylene disalicylate Type A medicated articles to make two-way combination Type C medicated feeds used for control of porcine proliferative enteropathies (ileitis) and for increased rate of weight gain and improved feed efficiency in swine.

DATES: This rule is effective September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Diane D. Jeang, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7574.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–059 that provides for use of ChlorMax™ (50, 65, or 70 grams per pound (g/lb) chlortetracycline as chlortetracycline hydrochloride) and BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb bacitracin methylene disalicylate) Type A medicated articles to make combination Type C medicated feeds for use in growing and finishing swine. The Type C medicated feeds contain approximately 400 g/ton CTC (to provide 10 milligrams/lb body weight) and 10 to 30 g/ton bacitracin methylene disalicylate, and they are used for the control of porcine proliferative enteropathies (ileitis) caused by*Lawsonia intracellularis* susceptible to chlortetracycline and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of July 7, 2000, and the regulations in 21 CFR 558.76 are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 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 in the table in paragraph (d)(1) by adding an entry under item (iv) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iv) * * *		* * *	* * *	* * *
*	*	*	*	*
		Swine; for control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline.	Feed for not more than 14 days; chlortetracycline and BMD® as provided by 046573 in § 510.600(c) of this chapter.	046573
*	*	*	*	*

* * * * *

Dated: August 23, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–23054 Filed 9–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved single-ingredient monensin and roxarsone Type A medicated articles to make two-way combination drug Type C medicated feed used as an aid in the prevention of coccidiosis and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in replacement chickens.

DATES: This rule is effective September 8, 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: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–139 that provides for use of Coban® (45 or 60 grams per pound (g/lb) of monensin as monensin sodium) and 3-Nitro® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds for replacement chickens intended for use as caged layers. The Type C medicated feeds contain 90 to 110 g/ton monensin and 22.7 to 45.4 g/ton roxarsone, and they are used as an aid in the prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of June 28, 2000, and the regulations in 21 CFR 558.355 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 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 558.355 is amended by adding paragraph (f)(4)(iv) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(4) * * *

(iv) *Amount per ton*. Monensin, 90 to 110 grams, plus roxarsone, 22.7 to 45.4 grams.

(*a*) *Indications for use*. As an aid in the prevention of coccidiosis caused by *Eimeria necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations*. Feed continuously as sole ration. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Do not feed to laying chickens. Do not feed to chickens over 16 weeks of age. Poultry should have access to drinking water at all times. Drug overdosage

or lack of water may result in leg weakness or paralysis. As monensin sodium provided by 000986; roxarsone as provided by 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: July 25, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–23053 Filed 9–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Parts 40 and 42

[Public Notice 3377]

Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Change in Procedures for Payment of Immigrant Visa Fees

AGENCY: Department of State.

ACTION: Interim Rule.

SUMMARY: This rule adopts a proposed rule published October 28, 1999 [64 FR 58004] to the extent of clarifying that the new requirement that immigrant visa applicants must pay the application processing fee prior to the time of formal application for a visa will be phased-in to ensure that unanticipated problems are resolved prior to world-wide applicability.

DATES: Effective September 8, 2000. Comments must be received by November 7, 2000.

ADDRESSES: Comments may be sent to Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, e-mail, *odomhe@state.gov* or FAX: (202) 663–3898.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The Department received no comments relating to the original proposed rule and assumes, therefore, that the rationale for the change was accepted by all parties. Most new programs, of every variety, have experienced problems at the initial stage, however. The Department believes it prudent, under those circumstances, to apply this new rule initially only with respect to applicants at certain posts which are already participating in a special program at the National Visa Center. Applicants at all other posts will continue to pay fees in accordance with current procedures until such time as the Department is satisfied the system is effective and those other posts are phased into this program.

The ten posts selected for the special program together represent about 40% of all immigrant visa applicants. The program is thus both large enough in terms of volume and small enough in terms of applicability as to be a feasible test. Additional posts will be phased in based on the size of their overall operations beginning with the next largest. It is anticipated that all posts will be included in this new procedure within the next two, possibly three, years.

The 10 posts at which advanced payment of the application processing fee must be paid are: Manila, Ciudad Juarez, Santo Domingo, Guangzhou, Bogota, Port au Prince, Georgetown, Freetown, Tirana, and Montreal. As noted above, at all other posts that fee will continue to be paid immediately prior to formal application for a visa until each such post is designated by the Deputy Assistant Secretary for the new procedure.

No further changes are being made in the rule proposed on October 26, 1999.

List of Subjects in 22 CFR Parts 40 and 42

Aliens, Immigration, Passports and visas.

Accordingly, the Department of State amends 22 CFR Chapter I as set forth below.

PART 40—[AMENDED]

1. The authority citation for Part 40 is amended to read:

Authority: 8 U.S.C. 1104.

2. Amend § 40.1 by redesignating paragraphs (l), (m), (n), (o), (p), (q), (r), and (s) as paragraphs (m), (n), (o), (p), (q), (r), (s), and (t), respectively, and adding a new paragraph (l) to read:

§ 40.1 Definitions.

* * * * *

(l) *Make or file an application for a visa* means:

(1) For a nonimmigrant visa applicant, submitting for formal adjudication by a consular officer of a completed Form OF–156, with any required supporting documents and the requisite processing fee or evidence of the prior payment of the processing fee when such documents are received and accepted for adjudication by the consular officer.

(2) For an immigrant visa applicant, personally appearing before a consular officer and verifying by oath or affirmation the statements contained on the Form OF–230 and in all supporting documents, having previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee.

* * * * *

PART 42—[AMENDED]

3. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104.

4. Revise § 42.71(b) to read as follows:

§ 42.71 Authority to issue visas; visa fees.

* * * * *

(b) *Immigrant visa fees.* The Secretary of State prescribes separate fees for the processing of immigrant visa applications and for the issuance of immigrant visas thereafter to persons whose applications are approved. An individual registered for immigrant visa processing at a post designated for this purpose by the Deputy Assistant Secretary for Visa Services must pay the processing fee upon being notified that a visa is expected to become available in the near future and being requested to obtain the supporting documentation needed to apply formally for a visa, in accordance with instructions received with such notification. The fee must be paid before an applicant at a post so designated will receive an appointment to appear and make application before a consular officer. Applicants at a post not yet so designated will continue to pay the fee immediately prior to formal application for a visa. All applicants must pay the issuance fee after the consular officer has completed the visa interview and approved issuance of the visa, but prior to its issuance. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the notification of prospective visa availability was sufficiently erroneous to preclude the applicant from benefiting from the processing. A fee collected for the issuance of an immigrant visa is refundable only if either of such officers determines that the visa was issued in error or could not be used as a result of U.S. Government actions over which the alien had no control and for which the alien was not responsible in whole or in part.

Dated: August 14, 2000.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 00–23115 Filed 9–7–00; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–19–1222a; A–1–FRL–6854–8]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of Vermont that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the state agency and approved by EPA.

EFFECTIVE DATE: This action is effective September 8, 2000.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, EPA-New England, One Congress Street, Boston, MA 02203; Office of Air and Radiation, Docket and Information Center (Air Docket), Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Donald O. Cooke, Environmental Scientist, at the above EPA-New England address or at (617) 918–1668.

SUPPLEMENTARY INFORMATION: This format revision will affect the ''Identification of Plan'' section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR); the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC; and the EPA—New England Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

The supplementary information is organized in the following order:

Description of a SIP
How EPA Enforces SIPs
How the State and EPA updates the SIP
How EPA Compiles the SIPs
How EPA Organizes the SIP Compilation
Where You Can Find a Copy of the SIP Compilation
The Format of the New Identification of Plan Section
When a SIP Revision Becomes Federally Enforceable
The Historical Record of SIP Revision Approvals
What EPA Is Doing in This Action
How This Document Complies With the Federal Administrative Requirements for Rulemaking

Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not

reproduced in its entirety in 40 CFR part 52, but is ''IBR.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. (Where you can find a copy of the SIP compilation.) The information provided allows EPA and the public to monitor the extent to which a state implements the SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

How the State and EPA Updates the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of Plan'' sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures, and ''Identification of Plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The Federally approved regulations and source-specific permits submitted by Vermont have been organized by EPA into a SIP compilation that contains the updated regulations and source-specific permits approved by EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis. The nonregulatory provisions are available by contacting Donald Cooke at EPA—New England.

How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation, each source-specific permit, and each nonregulatory provision. The effective dates in the tables indicate the date of the most recent revision of the regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

EPA—New England developed and will maintain the compilation for Vermont. A copy of the full text of the state's current compilation will also be maintained at the OFR and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the ''Identification of Plan'' section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of Plan section contains five subsections:

1. Purpose and scope
2. Incorporation by reference
3. EPA-approved regulations
4. EPA-approved source-specific permits
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c) or (d) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and its ability to enforce previously approved SIP measures, and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's action constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For

the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Vermont SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 7, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart UU—Vermont

2. Section 52.2370 is redesignated as § 52.2386 and the section heading and paragraph (a) are revised to read as follows:

§ 52.2386 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Vermont'' and all revisions submitted by Vermont that were federally approved prior to August 14, 2000.

* * * * *

3. A new § 52.2370 is added to read as follows:

§ 52.2370 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan for Vermont under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 14, 2000 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 14, 2000, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA-New England certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of August 14, 2000.

(3) Copies of the materials incorporated by reference may be inspected at the EPA-New England Office at One Congress Street, Boston, MA 02203; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) *EPA approved regulations.*

EPA APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Chapter 5 Air Pollution Control Subchapter I. Definitions				
Section 5–101	Definitions	07/29/93	04/22/98, 63 FR 19828	Definitions IBR'd into the Vermont SIP are numbered consecutively by EPA, and do not necessarily correspond to the State's assigned definition number in the Vermont State Regulation, which are re-numbered whenever definitions are added or deleted from the State Regulation.
Subchapter II. Prohibitions				
Section 5–201	Open burning prohibited	07/22/98	04/22/98, 63 FR 19828.	
Section 5–202	Permissible open burning	01/25/78	12/21/78, 43 FR 59496.	
Section 5–203	Procedures for local authorities to burn natural wood.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–211	Prohibition of visible air contaminants.	08/12/78	04/16/82, 47 FR 16331.	
Section 5–221	Prohibition of potentially polluting materials in fuel.	01/25/78	12/21/78, 43 FR 59496	Except Section 5–211(c)(i) and Section 5–211(c)(i).
Section 5–231	Prohibition of particular matter	11/13/81	02/26/85, 50 FR 7767.	
Section 5–241	Prohibition of nuisance and odor.	01/25/78	12/21/78, 43 FR 59496.	
Section 5–251	Control of nitrogen oxides emissions.	01/04/95	04/09/97, 62 FR 17084	Requires RACT for major stationary sources of NO_X.
Section 5–252	Control of Sulfur dioxide emissions.	11/04/79	02/19/80, 45 FR 10775.	
Section 5–253.1	Petroleum liquid storage in fixed roof Tanks.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.2	Bulk gasoline terminals	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.3	Bulk gasoline plants	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.4	Gasoline tank trucks	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.5	Stage I vapor recovery controls at gasoline dispensing facilities.	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.10	Paper coating	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.12	Coating of flat wood paneling	10/29/92	04/22/98, 63 FR 19829.	
Section 5–253.13	Coating of miscellaneous metal parts.	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.14	Solvent metal cleaning	07/29/93	04/22/98, 63 FR 19829.	
Section 5–253.15	Cutback and emulsified asphalt.	08/02/94	04/22/98 63 FR 19829.	
Section 5–253.20	Other sources that emit volatile organic compounds.	08/03/93	04/09/97, 62 FR 17084.	
Section 5–261	Control of hazardous air contaminants.	11/03/81	02/10/82, 47 FR 6014.	
Subchapter III. Ambient Air Quality Standards				
Section 5–301	Scope	12/15/90	03/05/91, 56 FR 9177.	
Section 5–302	Sulfur dioxide primary	03/24/79	02/19/80, 45 FR 10775.	
Section 5–303	Sulfur dioxide secondary.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–306	PM_{10} primary and secondary standards..	11/01/90	08/01/97, 62 FR 41282	Removal of the TSP standard (Section 5–304 and 5–305) and establishment of PM_{10} standard (Section 5–306).
Section 5–307	Carbon monoxide primary and secondary.	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–306, renumbered to 5–307 when new Section 5–306 for PM_{10} was created.
Section 5–308	Ozone primary and secondary	03/24/79	02/19/80, 45 FR 10775	Formerly Section 5–307, renumbered to 5–308 when new Section 5–306 for PM_{10} was created.

EPA APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Section 5–309	Lead primary and secondary	11/03/81	02/10/82, 47 FR 6014	Formerly Section 5–308, renumbered to 5–309 when new Section 5–306 for PM_{10} was created.
Section 5–310	Nitrogen dioxide primary and secondary.	12/15/90	03/05/91, 56 FR 9177	Formerly Section 5–309, renumbered to 5–310 when new Section 5–306 for PM_{10} was created.
Subchapter IV. Operations and Procedures				
Section 5–401	Classification of air contaminant sources.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–402	Written Reports when requested.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–403	Circumvention	12/10/72	05/31/72, 37 FR 10899.	
Section 5–404	Methods for sampling and testing of sources.	03/24/78	02/19/80, 45 FR 10775.	
Section 5–405	Required air monitoring	03/24/79	02/19/80, 45 FR 10775.	
Section 5–406	Required air modeling	03/24/79	02/19/80, 45 FR 10775.	
Subchapter V. Review of New Air Contaminant Sources				
Section 5–501	Review of construction or modification of air contaminant sources.	09/17/86	07/17/87, 52 FR 26982.	
Section 5–502	Major stationary sources and major modifications.	07/14/95	08/04/98, 62 FR 41870.	
Subchapter VII. Motor Vehicle Emissions				
Section 5–701	Removal of control devices	03/24/79	02/19/80, 45 FR 10775.	
Section 5–702	Excessive smoke emissions from motor vehicles.	03/24/79	02/19/80, 45 FR 10775.	
Section 5–801	Effective date	03/24/79	01/30/80, 45 FR 6781.	
Tables				
Table 1	Table 1 Process weight standards.	01/25/78	12/21/78, 43 FR 59496.	
Table 2	Table 2 PSD increments	12/15/90	03/05/91, 56 FR 9177.	
Table 3	Table 3 Levels of significant impact for non-attainment areas.	11/03/81	02/10/82, 47 FR 6014.	
Subchapter VIII. Registration of Air Contaminant Sources				
Section 5–801	Definitions	04/20/88	01/10/95, 60 FR 2527.	
Section 5–802	Requirement for registration	04/20/88	01/10/95, 60 FR 2527.	
Section 5–803	Registration procedure	04/20/88	01/10/95, 60 FR 2527.	
Section 5–804	False or misleading information.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–805	Commencement or recommencement of operation.	04/20/88	01/10/95, 60 FR 2527.	
Section 5–806	Transfer of Operation	04/20/88	01/10/95, 60 FR 2527.	

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Simpson Paper Company, Centennial Mill in Gilman, Vermont.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–251(2).	01/04/95	04/09/97, 45 FR 17087	Administrative orders for Simpson Paper Company, in Gilman, Vermont, adopted and effective on January 4, 1995.

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
U.S. Samaica Corporation, in Rutland, VT.	Environmental Protection Regulations, Chapter 5, Air Pollution Control, Subchapter II. Section 5–253.20.	01/04/95	04/09/97, 45 FR 17087	Administrative orders for U.S. Samaica Corporation, in Rutland, Vermont, adopted and effective on January 4, 1995.

(e) *Nonregulatory.*

VERMONT NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Notice of public hearing	Statewide	Submitted 02/03/72	06/15/72, 37 FR 11911	(c)(1) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 02/25/1972 ...	5/31/72 37 FR 10899	(c)(2) Vermont Agency of Environmental Conservation.
Miscellaneous non-regulatory revisions to the plan.	.....	Submitted 03/03/75	01/21/76, 41 FR 3085	(c)(4) Vermont Agency of Environmental Conservation. Deletion of Winooski sampling site for particulates and sulfur dioxide.
Plans to meet various requirements of the Clean Air Act, including Part C.	.....	Submitted 03/21/79, and 11/21/79.	01/30/80, 45 FR 6781	(c)(9) See Plans to attain below.
Attainment Plans to meet the requirements of Part D and the Clean Air Act, as amended in 1977.	.....	Submitted 03/21/79, 11/21/79, 11/27,79, and 12/19/79.	02/19/80, 45 FR 10775	(c)(10) Plans to attain. State of Vermont air quality implementation plan (March 1979). The secondary TSP standard for Barre City and a portion of the Champlain Valley Air Management Area, the carbon monoxide standard in the Champlain Valley Air Management Area and the ozone standard in Chittenden, Addison, and Windsor Counties. A program was also submitted for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas. Certain miscellaneous provisions were also included.
A plan to provide for public, local and state involvement in federally funded air pollution control activities.	.....	Submitted 03/28/80	09/09/80, 45 FR 59314	(c)(11) A plan to provide for public, local and state involvement in federally funded air pollution control activities.
A plan to attain and maintain the National Ambient Air Quality Standard for lead.	.....	Submitted 06/24/80, and 11/07/80.	03/18/81, 46 FR 17192	(c)(12) A plan to attain and maintain the National Ambient Air Quality Standard for lead. A letter further explaining the state procedures for review of new major sources of lead emissions.
A revision to the air quality monitoring network.	.....	Submitted 03/21/79	10/08/80, 45 FR 66789; corrected by 03/16/81, 46 FR 15897.	(c)(13) meets the requirements of 40 CFR part 58.
Narrative submittal ''Implementation Plan for the Protection of Visibility in the State of Vermont'' and ''Appendices''.	.....	Submitted 04/15/86	07/17/87, 52 FR 26973	(c)(19) Describing procedures, notifications, and technical evaluations to fulfill the visibility protection requirements of 40 CFR part 51, subpart P.
State Implementation Plan narrative.	.....	Submitted 12/07/90, and 01/10/91.	03/05/91, 56 FR 9175	(c)(20) State of Vermont Air Quality Implementation Plan dated November, 1990.

VERMONT NON REGULATORY—Continued

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approved date	Explanations
State Implementation Plan narrative.	.....	Submitted 08/09/93	01/10/95, 60 FR 2524	(c)(21) State of Vermont Air Quality Implementation Plan dated February, 1993. To meet the emission statement requirement of the CAAA of 1990.
Revisions to the State Implementation Plan.	.....	Submitted 02/03/93, 08/09/93, and 08/10/94.	04/22/98, 63 FR 19828	(c)(25)State of Vermont: Air Quality Implementation Plan dated August 1993.
Revisions to the State Implementation Plan.	.....	Submitted	07/10/00, 65 FR 42290	(c)(26)letter from VT Air Pollution Control Division dated July 28, 1998 stating a negative declaration for the aerospace coating operations CTG category.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6866–3]

National Emission Standards for Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections and clarifications.

SUMMARY: This action promulgates corrections and several clarifications to the amendments to the ''National Emission Standards for Halogenated Solvent Cleaning'' promulgated on December 3, 1999 (64 FR 67793). The amendments finalized compliance options for continuous web cleaning. These corrections and clarifications ensure that all owners or operators of solvent cleaning machines have appropriate and understandable requirements for their cleaning machines.

EFFECTIVE DATE: September 8, 2000.

ADDRESSES: Interested parties may review items used to support these final rule amendments at: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–39, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. Paul Almodovar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0283.

For information regarding the applicability of this action to a particular entity, contact Ms. Acquanetta Delaney, Manufacturing Branch, Office of Compliance (2224A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–7061.

SUPPLEMENTARY INFORMATION: *Docket.* The docket number for this rulemaking is A–92–39. The docket is an organized file of information compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.)

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The following entities are potentially regulated by this final rule.

Category	SIC codes	Examples of potentially regulated entities
Industry	33, 34, 36, and 37	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This list includes the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility or company is regulated by this final rule, you should carefully examine the applicability criteria in § 63.460 of the promulgated rule. If you have any questions regarding the applicability of this final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Is the Purpose of This Action?

The purpose of this action is to provide corrections and several clarifications to the December 3, 1999 (64 FR 67793) final rule changes to the halogenated solvent cleaning national emission standards for hazardous air pollutants (NESHAP). The corrections fix an incorrect cross reference included

in the revised regulatory text and add regulatory language that was inadvertently omitted from the revised regulatory text. The clarifications ensure that the original intent of the revised language is clearly presented. These corrections and clarifications do not change any requirements for any sources.

II. What Corrections and Clarifications Are Included in This Action?

A. Corrected Cross Reference to § 63.463(g)(3)(vii) and Clarification to § 63.463(h)(2)(v)

Section 63.463(g)(3)(vii), which outlines requirements for continuous web cleaning machines that use an exhaust within the machine, included an incorrect cross reference. The reference to the carbon adsorber requirements of paragraph (e)(2)(ii) is a typographical error and should read (e)(2)(vii). This error is being corrected in today's action.

In addition, as stated in the December 3, 1999 **Federal Register** document preamble (64 FR 67795), EPA intended this section to allow for a carbon adsorption (CAD) system that meets either the 100 parts per million standard (*i.e.,* § 63.463(e)(2)(vii)) or the 70 percent efficient system (*i.e.,* § 63.463(g)(2)) requirement. Therefore, the reference to the 70 percent efficient system requirement has been added to § 63.463(g)(3)(vii).

Section 63.463(h)(2)(v) for remote reservoir continuous web cleaning machines was intended by EPA to be a parallel requirement to § 63.463(g)(3)(vii) for other continuous web cleaning machines. The reference in § 63.463(g)(3)(vii) to the CAD requirements was correct in the December 3, 1999 **Federal Register** amendments. However, the reference to the exhaust requirements could be misinterpreted. Therefore, EPA is making the same clarifying revisions to reference the 70 percent efficient system requirements in § 63.463(h)(2)(v) as discussed above.

B. Clarification That § 63.463(e)(2)(vii) Applies to All Exhausts Within a Machine

The language in § 63.463(e)(2)(vii) is being modified to be parallel to the language in § 63.463(g)(3)(vii) and § 63.463(h)(2)(v). This clarifies EPA's intent that all exhausts within any cleaning machine are required to be vented to a properly operated and maintained CAD system.

C. Addition of Exemption for Steam-Heated Units

In Section III.B of the December 3, 1999 **Federal Register** preamble (64 FR 67796), EPA stated that steam-heated units would no longer be required to have a device that shuts off the sump heat if the level drops to the sump heat coils. The EPA inadvertently omitted this change to § 63.463(a)(4) from the promulgated changes. This omission has been corrected. In addition, a similar exclusion has been added to the parallel requirements for continuous web cleaning machines.

D. Clarification That the New Alternative Standard Applies to Entire Cleaning Systems

When developing the alternative standard for continuous web cleaning machines in § 63.463(d), EPA considered whether the option should apply to single or multiple continuous web cleaning machines. The EPA understood that some systems exist that would make compliance on an individual basis difficult or unnecessarily burdensome. For example, EPA learned of situations where more than one continuous web cleaning machine was routed through a single CAD system. The EPA did not want to preclude the use of such systems when they could comply with the maximum achievable control technology standard.

The compliance method included in § 63.465(g) was selected because it allowed for a determination of overall control efficiency of a system, whether that system comprised one or multiple continuous web cleaning machines. The ability to use Equation 8 in § 63.465(h)(1) for an entire system is clarified in § 63.464(d). In addition, the definitions of the variables for Equation 8 in § 63.465(h)(1) have been corrected to read ''solvent cleaning system'' instead of ''solvent cleaning machine.''

E. Clarification of the Term R_i in Equation 8

The term R_i in Equation 8 of § 63.465 has been clarified in this action. The intent of the term, R_i, in the original equation was to represent the amount of chlorinated solvent recovered by the CAD system and recycled through the solvent cleaning system. This amount divided by the total usage in the system (*i.e.,* the denominator of Equation 8 of § 63.465) provides an overall cleaning system control efficiency.

Through some questions from industry since the December 3, 1999 amendments were published, it has become apparent to EPA that the term may be confusing. Some have questioned whether this term was meant to cover all solvent that is recirculated through the system, including liquid recycled through a distillation unit and solvent recovered from the CAD system. It was never EPA's intent that R_i be interpreted to be the total amount of solvent recirculated through a system. Therefore, EPA has clarified the definition of the term R_i by changing the phrase ''solvent recycled'' to the phrase ''solvent recovered from the CAD system and recycled.''

F. Clarification of § 63.465(b)

The EPA is modifying § 63.465(b) to remove an unnecessary cross reference to § 63.465(f). This reference is unnecessary since § 63.465(b) only refers to sources complying with the alternative standards of § 63.464, while paragraph (f) of § 63.465 includes requirements that only apply to sources complying with the standards in § 63.463.

G. Addition of References to § 63.463(h) in § 63.463(e)

The EPA inadvertently excluded references to paragraph § 63.463(h), which includes the requirements for remote-reservoir continuous web cleaning machines, in the paragraphs that discussed the requirements for squeegee systems, air-knife systems, and combine squeegee and air-knife systems in § 63.463(e). The EPA has corrected this oversight in today's action by revising the introductory paragraph to § 63.463(e)(ix), (x), and (xi) to include a reference to § 63.463(h).

III. Impacts

The changes contained in these final rule amendments are corrections and clarifications and do not change the intended coverage of the halogenated solvent cleaning NESHAP (40 CFR part 63, subpart T). These changes will not affect the estimated emissions reductions or the control costs for these standards. These clarifications and corrections should make it easier for owners and operators of affected sources and for local and State authorities to understand and implement the requirements in 40 CFR part 63, subpart T.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of

the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule does not qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule only provides amendments to ensure that all owners or operators of solvent cleaning machines have appropriate and attainable requirements for their cleaning machines. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. 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 OMB, 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 officials 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.''

These final rule amendments do not impose any duties or compliance costs on Indian tribal governments. Further, the final rule amendments provided herein do not significantly alter the control standards imposed by the halogenated solvent cleaning NESHAP for any source, including any that may affect communities of the Indian tribal governments. Hence, today's final rule amendments do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

D. 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, EPA 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, so that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are not an ''economically significant'' regulatory action as defined by Executive Order 12866 and are based on technology performance rather than health or risks that may disproportionately affect children.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 aggregate, or by the private sector, of $100 million or more in any 1 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 that 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.

The EPA has determined that these final rule amendments do 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 1 year, and that these final rule amendments do not significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. The EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least-costly, most cost-effective, or least-burdensome alternative.

In addition, because small governments will not be significantly or uniquely affected by these final rule amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA requires EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA must prepare a regulatory flexibility analysis unless EPA certifies that the rule will not have a ''significant impact on a substantial number of small entities.'' Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

These final rule amendments would not have a significant impact on a substantial number of small entities because they clarify and make corrections to the promulgated halogenated solvent cleaning NESHAP, but impose no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

The Information Collection Request (ICR) was submitted to the OMB under the *Paperwork Reduction Act* (44 U.S.C. 3501, *et seq.*) at the time this rule was originally promulgated. These final rule amendments to the halogenated solvent cleaning NESHAP will have no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards. This action does not involve the proposal of any new technical standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Continuous web cleaning, Film cleaning, Halogenated solvent cleaning machines, Hazardous substances.

Dated: August 29, 2000.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority for part 63 continues to read as follows:

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

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

2. Section 63.463 is amended by:

a. Revising paragraph (a)(4);

b. Revising paragraph (d)(10);

c. Revising paragraphs (e) introductory text, (e)(2)(vii) introductory text, (ix) introductory text, (x) introductory text, and (xi) introductory text;

d. Revising paragraphs (g)(3)(iv) and (vii); and

e. Revising paragraph (h)(2)(v).

The revisions read as follows:

§ 63.463 Batch vapor and in-line cleaning machine standards.

(a) * * *

(4) Each vapor cleaning machine shall be equipped with a device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils. This requirement does not apply to a vapor cleaning machine that uses steam to heat the solvent.

* * * * *

(d) * * *

(10) Each operator of a solvent cleaning machine shall complete and pass the applicable sections of the test of solvent cleaning procedures in appendix A to this part if requested during an inspection by the Administrator.

* * * * *

(e) Each owner or operator of a solvent cleaning machine complying with paragraph (b), (c), (g), or (h) of this section shall comply with the requirements specified in paragraphs (e)(1) through (4) of this section.

* * * * *

(2) * * *

(vii) If a carbon adsorber in conjunction with a lip exhaust or other exhaust internal to the cleaning machine is used to comply with these standards, the owner or operator shall comply with the following requirements:

* * * * *

(ix) If a squeegee system is used to comply with the continuous web

cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(x) If an air knife system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(xi) If a combination squeegee and air knife system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(g) * * *

(3) * * *

(iv) Each vapor cleaning machine shall be equipped with a device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils. This requirement does not apply to a vapor cleaning machine that uses steam to heat the solvent.

* * * * *

(vii) Each cleaning machine that uses a lip exhaust or any other exhaust within the solvent cleaning machine shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber that meets the requirements of either paragraph (e)(2)(vii) or (g)(2) of this section.

* * * * *

(h) * * *

(2) * * *

(v) Each cleaning machine that uses a lip exhaust or any other exhaust within the solvent cleaning machine shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber that meets the requirements of either paragraph (e)(2)(vii) or (g)(2) of this section.

* * * * *

3. Section 63.464 is amended by revising paragraph (d) to read as follows:

§ 63.464 Alternative standards.

* * * * *

(d) As an alternative to meeting the requirements in § 63.463, each owner or operator of a continuous web cleaning machine can demonstrate an overall cleaning system control efficiency of 70 percent or greater using the procedures in § 63.465(g). This demonstration can be made for either a single cleaning machine or for a solvent cleaning system that contains one or more cleaning machines and ancillary equipment, such as storage tanks and distillation units. If the demonstration is made for a cleaning system, the facility must identify any modifications required to the procedures in § 63.465(g) and they must be approved by the Administrator.

4. Section 63.465 is amended by revising paragraph (b) and (h)(1) to read as follows:

§ 63.465 Test methods.

* * * * *

(b) Except as provided in paragraph (g) of this section for continuous web cleaning machines, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.464 shall, on the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that has been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions as specified in paragraph (c) of this section. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

* * * * *

(h) * * *

(1) Using the records of all solvent additions, solvent deletions, and solvent recovered from the carbon adsorption system for the previous monthly reporting period required under § 63.467(e), determine the overall cleaning system control efficiency (E_o) using Equation 8 of this section as follows:

$$E_o = R_i / \left(R_i + Sa_i - SSR_i \right) \qquad \text{(Eq. 8)}$$

Where:

E_o = overall cleaning system control efficiency.

R_i = the total amount of halogenated HAP liquid solvent recovered from the carbon adsorption system and recycled to the solvent cleaning system during the most recent monthly reporting period, i, (kilograms of solvent per month).

Sa_i = the total amount of halogenated HAP liquid solvent added to the solvent cleaning system during the most recent monthly reporting period, i, (kilograms of solvent per month).

SSR_i = the total amount of halogenated HAP solvent removed from the solvent cleaning system in solid waste, obtained as described in paragraph (c)(2) of this section, during the most recent monthly reporting period, i, (kilograms of solvent per month).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6864–8]

Establishment of Alternative Compliance Periods Under the Anti-Dumping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Clean Air Act as amended in 1990 (''the Act'') directs the Environmental Protection Agency (''EPA'' or ''we'') to issue regulations requiring reformulated gasoline for major metropolitan areas with the worst ozone air pollution problems. Other areas with ozone levels exceeding the public health standards may voluntarily choose to participate in the federal reformulated gasoline program. In order to ensure that the ''dirtier'' components of reformulated gasoline are not dumped into gasoline sold in areas not participating in the reformulated gasoline program (''conventional gasoline'' areas), the Act requires EPA to ensure that the quality of conventional gasoline does not fall below 1990 levels. The Act also mandates that we establish an appropriate compliance period or compliance periods associated with meeting the anti-dumping standards. Under the existing regulations for reformulated gasoline and anti-dumping, the compliance period is one year. However, we believe that in certain limited circumstances a longer conventional gasoline anti-dumping may be appropriate on a temporary basis. Such an alternative compliance period is only appropriate for a refiner who produces conventional gasoline and who is starting up a refinery and facing significant hardship in complying with the anti-dumping statutory baseline NO_X standard. Moreover, we believe that it is appropriate for any refinery subject to an alternative compliance period to meet additional substantive and administrative requirements to ensure that there is no environmental detriment as a result of the longer averaging period. This direct final rule sets forth procedures for

establishing alternative compliance periods under the anti-dumping program and the standards applicable to refineries operating under such compliance periods.

DATES: This direct final rule is effective October 23, 2000, unless we receive adverse comments or a request for a public hearing by October 10, 2000. If the Agency receives adverse comment or a request for public hearing by October 10, 2000, we will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

ADDRESSES: If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (6406J), Washington, DC 20460, (202) 564–8987. Materials relevant to this direct final rule have been placed in docket A–2000–27 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. You may be charged a reasonable fee for photocopying services.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are parties that produce conventional gasoline. Regulated categories and entities include:

Category	Examples
Industry	Gasoline refiners.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. Background

This section summarizes the anti-dumping program. Since refiners who request flexibility under today's rule are likely to elect to use sulfur-reducing technologies early in order to meet production requirements under this rule, a brief overview of the Tier 2 gasoline program is included as well.

The Anti-Dumping Program

The Clean Air Act required EPA to establish rules for reformulated gasoline (RFG) designed to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants. Reformulated gasoline is required to be used in specific metropolitan areas with the worst ozone problems. Several other areas with ozone levels exceeding the public health standard have voluntarily chosen to use RFG. Additionally, the Act required us to establish regulations covering all gasoline that is not reformulated. Such gasoline is called conventional gasoline, and the standards governing it are called the anti-dumping standards. We issued final reformulated gasoline and anti-dumping regulations on December 15, 1993 [1] and the standards in those regulations became effective in January 1995.

The purpose of anti-dumping standards is to ensure that the quality of a refiner's conventional gasoline does not get worse once the reformulated gasoline program begins. To ensure that this does not happen, the Act requires that each refiner's conventional gasoline be at least as clean as the gasoline produced by that refiner during a specific ''baseline'' year. The baseline reference year specified in the Act is 1990. The anti-dumping program specifically governs the exhaust toxics and NO_X emissions of conventional gasoline. These emissions are determined using the Complex Model, a tool which uses the fuel specifications, or parameters, of a gasoline blend to calculate the emissions associated with that gasoline. The fuel parameters included in the Complex Model are aromatics, olefins, benzene, sulfur, oxygen content and oxygenate type, the percent of fuel evaporated at 200 °F and 300 °F (E200 and E300, respectively) and Reid vapor pressure, or RVP.

Under the anti-dumping program, each refinery and importer has an individual baseline consisting of a set of values for the Complex Model fuel parameters and the exhaust toxics and NO_X emissions associated with those values representing the specification of the gasoline that the refiner produced in 1990. An individual baseline can be one of two types. The first type is the unique individual baseline. A refinery or importer has a unique individual baseline if it was in operation for at least 6 months in 1990 and had sufficient data and supporting analysis to determine the actual quality of its 1990 gasoline to EPA's satisfaction. Those with unique individual baselines also have an associated individual baseline volume, which is the volume of gasoline produced or imported by that refiner in 1990. The other type of individual baseline is the statutory baseline. The statutory baseline consists of a set of fixed values for the Complex Model fuel parameters and the emissions associated with those values which represent the average quality of all gasoline produced or sold in the United States in 1990. The summer portion of the statutory baseline was specified in the Clean Air Act; the corresponding winter portion was developed by EPA. Together, the summer and winter portions form the annual average statutory baseline which is specified in 40 CFR Part 80.91(c)(5). There is no individual baseline volume for those refineries or importers for which the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is determined on an annual basis. Each batch of gasoline is evaluated under the appropriate summer or winter portion of the Complex Model; the resulting emissions calculated for batch are volume-weighted to determine the annual average exhaust toxics and NO_X emissions for the refinery or importer. The resulting annual average emissions are compared to the baseline emissions values to determine whether the refinery or importer is in or out of compliance with its anti-dumping standards.

Section 211(k)(8)(D) of the Act directs us to establish ''an appropriate compliance period or compliance periods'' to be used for assessing compliance with the anti-dumping regulations. As mentioned above, we have established a one year compliance period for anti-dumping. A one year compliance period is consistent with other fuels programs utilizing averaging and annual reporting, including the RFG program. Generally, a one year compliance period is desirable because it provides an effective monitoring period for environmental purposes while permitting flexibility with respect

[1] ''Regulaation of Fuels and Fuel Additives: Standard for Reformulated and Conventional Gasoline—Final Rule,'' 59 FR 7812 (February 16, 1994). See 40 CFR part 80 subparts D, E, and F.

to averaging over the calendar year. A one year period gives more assurance that gross violations will not occur before the violation is discovered and appropriate action is taken and that those responsible for the violation are held accountable. A one year period prevents a company from violating for several years, generating a long-term environmental detriment, and then going out of business before it can be held accountable. A one year period is also simple for compliance accounting purposes. Although we chose the one year compliance period for the reasons just mentioned, we recognize that the Act permits us to establish alternative anti-dumping compliance periods by regulation.

Tier 2 Gasoline

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks through implementation of programs like RFG and anti-dumping. Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light duty trucks will continue to be significant contributors to air pollution. In light of this trend and to build upon programs aimed at reducing emissions from motor vehicles and motor vehicle fuels, EPA recently issued regulations establishing lower sulfur content for all gasoline [2] (*i.e.*, ''Tier 2 gasoline'') and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, and vans and pick-up trucks under 8,500 lbs. The Tier 2 program will also reduce ozone and particulate matter (PM) pollution. Gasoline sulfur levels significantly affect NO_X emissions. Since NO_X emissions are ozone precursors, a reduction in the sulfur level of gasoline will reduce ozone pollution. The level of gasoline sulfur control required under the Tier 2 program will also benefit the environment by directly reducing emissions of sulfur compounds.

The Tier 2 gasoline standards will be fully implemented by 2006 by all refiners except for those subject to geographic phase-in area (GPA) requirements, who have until 2007, and certain other qualifying refiners, who have until 2008. (If a hardship extension is granted, an individual refiner may have until 2010 to meet the final standards.) The Tier 2 program is structured to permit averaging in order to meet the sulfur standard, with an average sulfur content standard of 30 ppm and a per gallon sulfur limit of 80 ppm by the date of full implementation. Benefits from the Tier 2 gasoline program may be seen more immediately, as some refiners are expected to start lowering sulfur levels as early as this year. Those who lead the way in reducing sulfur earlier than required may generate marketable credits or allotments. As with the RFG and anti-dumping programs, compliance is demonstrated based upon a one year compliance period.

III. Today's Action

Need for and Purpose of Today's Action

As discussed above, section 211(k)(8)(D) of the Act directs EPA to establish an appropriate compliance period or compliance periods for the purpose of assessing compliance with anti-dumping requirements. At the present time, the only compliance period that has been established for anti-dumping is a one year compliance period. The one year compliance period is consistent with the one year period established under other existing fuels programs and, at the time the anti-dumping regulations were developed, there was no compelling reason or identified benefit to specifying any alternative compliance period.

We believe that achieving the Tier 2 gasoline sulfur reductions, at the refinery level, as soon as possible is an extremely valuable mechanism for reducing vehicle emissions, perhaps more so than any other recently promulgated gasoline regulation. We are also aware of at least one refinery in a start-up mode which would be able to achieve the applicable Tier 2 gasoline sulfur reductions earlier than required, but would not be able to comply with its anti-dumping standard, which is the statutory baseline, in early production years. In order to comply with its anti-dumping standard, the refiner would have to delay the start-up process and significantly delay the time frame in which it could produce gasoline meeting the Tier 2 gasoline sulfur standards.

Because we believe that achieving the Tier 2 gasoline sulfur levels is critical to reducing ozone levels by reducing emissions of the ozone precursor NO_X (see the discussion in ''Summary of Today's Action'' below), we believe it is appropriate to allow an alternative anti-dumping compliance period for a refinery in start-up mode, provided that the refiner can show that the refinery will achieve the Tier 2 gasoline sulfur levels earlier than otherwise required. At the same time, we want to ensure that no environmental detriment occurs as a result of the flexibility we are providing, and have included other requirements the refinery must meet which will provide the appropriate environmental protection. The details of the flexibility are described below.

Summary of Today's Action

We are permitting a refinery in start-up mode which is unable to meet its anti-dumping standard during the start-up process, but which would otherwise be able to meet the Tier 2 gasoline sulfur standards earlier than required, to petition the Agency for an alternative compliance period. The Tier 2 standards for most refiners take effect in 2006. (See ''Tier 2 Gasoline,'' above, for a more detailed discussion of refiner compliance dates.) A refinery eligible for this relief must be starting up production of conventional gasoline and must never have produced conventional gasoline that was subject to the anti-dumping regulations. To ensure that the refinery will meet the applicable Tier 2 gasoline standards early, the alternative compliance period is limited to a two to five year span, as determined by the Agency. Because of the other requirements associated with this rule, we believe that a refinery would choose to request the shortest alternative compliance period possible. Additionally, a refiner must show that it would be unable to meet its anti-dumping NO_X requirement under the current, one year compliance period. While the anti-dumping standard for a refinery involves both exhaust toxics and NO_X emissions, we are requiring that the proposed alternative compliance period would only be available to a refinery upon a showing that it would otherwise be unable to meet its NO_X standard. This is because sulfur significantly affects NO_X emissions,[3] and decreasing sulfur will result in significant NO_X emission reductions by moving toward the goal of the low sulfur levels required by the Tier 2 standards. Though a refiner may have difficulty meeting its exhaust toxics anti-dumping standard, for which fuel benzene and aromatics are the primary fuel parameters, the refinery units which impact these two fuel parameters are different than those used to reduce sulfur. (Most refineries will need to install new equipment in order

[2] ''Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). See also 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] Under the Complex Model, the tool used to evaluate anti-dumping performance, olefins is the other fuel parameter which significantly impacts NO_X emissions.

to reduce sulfur to the levels required under the Tier 2 standards.) Thus, reducing benzene and/or aromatics does not contribute to the goal of achieving the Tier 2 gasoline sulfur levels early, and, consequently, an alternative compliance period based on the inability to meet the anti-dumping exhaust toxics standard would not be appropriate given the considerations underlying today's rule.

In addition to meeting the Tier 2 gasoline sulfur standards early, the gasoline produced by a refinery over the entire alternative compliance period must result in a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refinery produced gasoline that did not comply with the statutory baseline. Additionally, the refiner must purchase stationary source NO_X credits sufficient to offset any NO_X deficit generated (on a quarterly basis) and must meet the specific requirements of this direct final rule, including additional reporting requirements. By modifying the standards applicable to refineries with an alternative compliance period, we are providing appropriate assurance that no environmental disbenefit occurs as a result of allowing an alternative compliance period.

When regulated entities cut emissions more than is required, the ''extra'' environmental benefit may be considered as a pollution credit, usually measured in tons, that may be sold or banked for future use. Emissions trading associations have been created to facilitate the buying and selling of pollution credits. Marketable NO_X credits are currently generated through NO_X reduction programs in 13 states. In addition, there is a multi-state NO_X emission trading program operating in eight Northeastern states that are members of the Ozone Transport Commission. Further information on NO_X trading programs is available on the Internet at www.epa.gov/acidrain/programs.html.

As described below in ''How the Agency Will Act on a Petition'' and ''The Refiner's Responsibilities if a Petition is Granted,'' NO_X credits purchased quarterly to offset any NO_X deficit must be held by a refinery that operates under an adjusted compliance period under this rule. These banked credits function as collateral against any NO_X deficiency that the refiner creates, to minimize the possibility of environmental harm in the event the refinery does not fulfill its obligation under the other requirements of this rule. If, as planned, the refinery eventually produces gasoline that meets and then exceeds the NO_X baseline, the refiner may sell NO_X credits equal to the benefit produced during that quarter. If the refinery violates the conditions under which its petition is granted, the NO_X credits may be forfeited. The intention of this provision is that environment will suffer no net loss, although any NO_X deficit may occur in a different location than a NO_X credit was generated. Much of the gasoline in the U.S. is produced on the Gulf Coast and other coastal areas and shipped throughout the country, primarily by pipeline. Gasoline is fungible, and is normally transported in pipelines mixed with other batches that meet the same specifications. In general, it is not possible to predict where a particular batch of gasoline included in larger shipment will end up; as a result, it is not generally possible to predict where a NO_X deficit may occur. Similarly, it is not possible to predict where the air quality benefit from the doubled payback of any NO_X deficit will occur.

Who May Petition for an Alternative Anti-Dumping Compliance Period

A refiner may petition EPA for an alternative compliance period for any refinery that is starting up gasoline production for the first time under the anti-dumping requirements, that is subject to the statutory baseline, and that can demonstrate a significant hardship with regard to producing gasoline conforming to the statutory baseline for NO_X in the early years of production. Flexibility with regard to alternative anti-dumping compliance periods will be particularly helpful for challenged refiners (as described in the Tier 2 gasoline sulfur rule), including small refiners; however, any refiner who meets the threshold conditions above may submit a petition. The petition may be for a domestic or foreign refinery. The refiner must have specific plans to bring its gasoline into compliance with the statutory baseline early enough through the alternative compliance period in order to achieve the two-fold NO_X payback. Furthermore, the refiner must have specific and demonstrable plans to produce gasoline to pay back any NO_X deficit by the end of the requested compliance period. For many refiners, these plans would likely include early installation of sulfur-reducing technologies necessary to meet the Tier 2 gasoline standards.

When Must Petitions Be Received?

A refiner who meets the threshold conditions may petition the Agency for an alternative anti-dumping compliance period. For reasons discussed in the preceding sections, we believe that the window during which this flexibility is appropriate is the period before the Tier 2 gasoline program standards fully apply. Therefore, petitions for alternative anti-dumping compliance periods of four or five years in length must be received by no later than June 1, 2001. For an alternative compliance period of two or three years in length, the petition must be received no later than June 1, 2003. No alternative anti-dumping compliance period may be designed to start, or requested to start, after January 1, 2004 or to end after December 31, 2005.

What A Petition for an Alternative Anti-Dumping Compliance Period Must Contain

A refiner may petition for an alternative anti-dumping compliance period of two, three, four, or five years in length. The petition must, at a minimum, contain:

- The business name and address and any location(s) where the refiner conducts operations.
- The name and contact information for the responsible corporate officer and a contact person who can provide further clarification with regard to information in the petition.
- A detailed explanation of why the refinery is eligible to request an alternative anti-dumping compliance period. This explanation would include documentation showing that the refinery is starting up production and has never produced conventional gasoline subject to the anti-dumping regulations and information demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.
- The length of the averaging period requested (2, 3, 4, or 5 years) and a justification for why that length of averaging period is required.
- An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.
- The refinery's estimated gasoline production and average NO_X level for each of the years in which the alternative averaging period is required.
- A detailed description of the current refinery equipment and configuration.
- A detailed description of any changes or enhancements to the refinery equipment and configuration that will occur during the alternative averaging period requested.
- The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).

• A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.

• A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit. An equation for calculating the NO_X deficit and NO_X benefit is included in the regulations.

• A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.

• A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.

• Any other information the Administrator may require in order to fully evaluate the refiner's petition. Such information would include requests for clarification of any item(s) included in the petition that is necessary in order to render a final decision as to whether to grant or reject the petition.

The above items represent, at a minimum, the topics that must be addressed in the petition. The refiner may wish to elaborate on certain topics—*e.g.,* if it faces particular hardship because it is a small business or if its refinery faces other, unique challenges that may influence the Agency's decision on the petition.

If we find that any refiner has provided false or inaccurate information in connection with its petition, we will notify the refiner and the application of any alternative anti-dumping compliance period will be *void ab initio.*

How the Agency Will Act on a Petition and the Refiner's Responsibilities if a Petition Is Granted

Notification of Approval or Disapproval of Petition, and Dates by Which the Refinery Must Meet the Statutory NO_X Baseline Standard and Pay Back Double the NO_X Deficit

We will notify a refiner of approval or disapproval of its petition by mail after considering a complete petition. If approved, we will notify the refiner of the alternative anti-dumping compliance period approved (*i.e.,* two, three, four, or five years) and the interim standards that must be met. The interim standards shall be as set forth in the regulations and include two major standards that the refinery must meet. The first standard sets forth the date by which the refinery must start to comply with the statutory baseline NO_X standard, on average, for all its gasoline. For example, for a two year averaging period, the refiner must achieve this by the seventh quarter. Once the first date is reached, the refiner must continue to meet the statutory baseline standard for NO_X, on average, for all gasoline it produces.

The second standard sets forth the date by which the refinery must pay back double the NO_X deficit. This date corresponds to the end of the alternative averaging period. For example, for a two year averaging period, the refinery must pay back double the NO_X deficit by the end of the second year. Failure to meet one of these standards will result in a violation of the anti-dumping regulations. The anti-dumping standards, including NO_X emissions, are defined in units of milligrams per mile. In order to quantify the NO_X deficit or benefit in tons under today's rule, it is necessary to know the variance from the standard, the volume of gasoline involved and the average fuel economy for the overall national fleet of gasoline powered vehicles. For the purpose of these calculations, we are using the most current data as presented in the Calendar Year 1999 National Highway Traffic and Safety Administration report to Congress of 24.5 miles per gallon. Thus the constant figure in both equations of 2.7×10^{-8} is the product of the above fuel economy factor and the conversion from milligrams to tons. The average NO_X level and volume of gasoline produced during the quarter are self explanatory. The equations for calculating NO_X deficit and benefit are as follows:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Def}}$=the NO_X deficit for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NO_X standard of 1461 mg/mile, expressed in tons.

$NO_{X_{ad}}$=the average volume weighted NO_X emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d=the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Ben}}$=the NO_X benefit during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

$NO_{X_{ab}}$=the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile

G_b=the volume of gasoline produced during the quarter(s) the refiner is below the applicable NO_X standard, measured in gallons.

The calculations are to be performed on a quarterly basis. As an example, a 10,000 barrel per day refinery would produce 37.8 million gallons during a given quarter. Assuming the gasoline, on average, met a NO_X standard of 1500 mg/mi, the total NO_X deficit for the quarter would be

$$39.8 \text{ tons} = (1500 - 1461) * 37{,}800{,}000 * 2.7 \times 10^{-8}$$

As an example of how the NO_X deficit must be paid back on a two for one basis, assume that the same refinery has a two year alternative averaging period. Assuming that the refinery were to produce the same quality and volume of gasoline for the first five quarters and then began to produce gasoline meeting the statutory baseline (in order to meet the first standard), the total NO_X deficit, in tons, would be 199 tons. In order to meet the second standard, the paying back of double the NO_X deficit, the refiner would have to produce a total NO_X benefit of 199 * 2, or 398 tons of NO_X benefit. Thus, the alternative averaging period is designed to ensure that there is no overall environmental detriment by requiring a certain about of NO_X overcompliance.

Interim Milestones

A refiner may qualify for an extended averaging period only if, at the time of the petition, it activates a refinery that faces substantial demonstrated hardship in producing gasoline which meets the anti-dumping statutory baseline NO_X standards during the early years of production. EPA believes that this hardship is most likely to be the result

of a lack of the necessary refinery processing equipment. Moreover, it will be necessary for such a refiner to obtain this processing equipment in order to begin producing gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard. However, if such a refiner fails to obtain this processing equipment in a timely manner it is likely the refiner will not be able to offset the NO_X deficit created during the first phase of the extended averaging period by the require compliance deadline.

For this reason EPA believes it is appropriate for a refiner who has been granted an extended averaging period to demonstrate that reasonable progress is being made toward obtaining necessary processing equipment. As a result, under today's rule EPA is requiring refiners to include in extended averaging period petitions the expected dates for key milestones for obtaining necessary processing equipment. These milestones normally would include the dates for signing the contract for equipment design, for obtaining necessary permits, for obtaining financing commitments, and for breaking ground for construction. During the petition review EPA intends to evaluate the milestones proposed by the refiner and establish appropriate milestones that will be incorporated into any petition approval. The refiner will be required to submit reports to EPA demonstrating these milestones are met as a contingency for continued operation under the alternative compliance period.

Upon a refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the Administrator would have the discretion to accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_X standard, so that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. That is, a failure to meet a milestone may result in a requirement for the refinery to begin producing gasoline that complies with the statutory baseline beginning with the next quarterly averaging period and continuing thereafter. The acceleration of the requirement regarding compliance with the annual average statutory baseline NO_X standard would not affect any of the other standards or requirements applicable to the refinery under this section (e.g., the refinery would still be required to comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard by twice as much as the early NO_X deficit generated by the refinery). Moreover, upon the refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the refiner would forfeit any NO_X credits that it was required to have banked as of that time. EPA realizes that a refiner in this situation may not be able to produce gasoline that meets the statutory baseline and may be forced to produce products other than gasoline, such as blendstocks, or to close the refinery. However, allowing such a refiner to generate additional NO_X deficits would only result in additional environmental harm.

Additional Requirements

In addition to the requirements described in the preceding paragraph, the following general requirements apply to a refinery for which a petition is granted:

- The refinery must meet all applicable statutory baseline standards for an annual average compliance period, except the standard for NO_X. For example, this means that the refinery must comply with the toxics standards on an annual basis.
- The refiner must designate all gasoline produced during the period of time that the refinery does not meet the annual average statutory baseline standards as gasoline with a volatility of 9.0 pounds per square inch (psi).
- A refiner for which a petition is granted must provide a written demonstration that it has purchased and banked NO_X credits equal to the NO_X deficit calculated for the end of the preceding quarter and must retain these banked credits throughout the current quarter. The NO_X credits are necessary in order to guarantee that the refinery does not generate a net NO_X detriment. The amount of NO_X credits required to be banked will be calculated each quarter. When the refinery begins to produce conventional gasoline that, on average, meets the anti-dumping NO_X standard, it may sell NO_X credits off in an amount equal to any NO_X benefit generated in the preceding quarter. We believe that this approach permits more flexibility for the start-up refinery than an approach that would require them to make a significant up-front purchase of credits equal to the entire projected NO_X deficit for the alternative averaging period.
- A refinery for which a petition is granted may not generate any Tier 2 sulfur credits or allotments during the entire alternative anti-dumping compliance period.
- A refinery for which a petition is granted must submit anti-dumping compliance reports more frequently than other conventional gasoline refineries. This enhanced reporting will ensure that the refinery is on target with meeting the interim performance goals. The documents that must be submitted include quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter, and documents that demonstrate the refiner has purchased and banked the necessary amount of NO_X credits to equal the NO_X deficit calculated for that quarter.

Change in Alternative Averaging Period

At any point during the pendency of the alternative conventional gasoline anti-dumping compliance period the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. For example, if a refinery originally received an alternative compliance period with a duration of 2 years beginning on January 1, 2001, at any time prior to the end of that compliance period (January 1, 2003), the Administer may approve an application to assign to the refinery the standards and requirements that would have been applicable to the refinery had the refinery originally received one of the other alternative compliance periods. Any refinery for which a change in the applicable alternative compliance period is approved must thereafter operate as if the refinery had originally requested and received such new alternative compliance period, and shall be subject to the standards and other requirements applicable under such new alternative compliance period. Consequently, for a refinery with an original alternative compliance period of 2 years beginning on January 1, 2001 (which would end on January 1, 2003), for which the Administrator later approves a change to a 3 year compliance period on January 1, 2002, the termination date for the new alternative compliance period would be January 1, 2004, and the refinery would need to begin producing gasoline that complies with the annual average statutory baseline during the quarter beginning January 2004.

The Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject. No such application may result

in an alternative compliance period that extends beyond January 1, 2006. A refinery for which the Administrator approves a change in the alternative compliance period will be subject to all the standards and other requirements of the new alternative compliance period as well as any additional conditions or requirements that are included in the approval of the application for a changed alternative compliance period. Accept as specifically modified by this section, such refinery must continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the anti-dumping program and provides regulated parties with more flexibility with respect to compliance with the anti-dumping requirements. Pursuant to the terms of Executive Order 12866, OMB has notified us that it does not consider this a ''significant regulatory action'' within the meaning of the Executive Order and has waived review.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. This direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule would permit refiners to petition for alternative anti-dumping compliance periods and does not impose any substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or 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 we consult with those governments. If we comply by consulting, Executive Order 13084 requires us 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 our 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 us 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 direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's direct final rule does not create a mandate for any tribal governments. This direct final rule applies to gasoline refiners. Today's action makes some changes that would generally provide flexibility within the Federal anti-dumping requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA 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. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (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.

After considering the economic impacts of today's direct final rule on small entities, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's direct final rule would provide regulatory relief by permitting regulated parties, including small entities, to seek an extended anti-dumping compliance period. We have therefore concluded

that today's direct final rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the direct final rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

This action establishes a petition process that involves the collection of information. It also requires reports that will utilize existing RFG and anti-dumping reporting forms. Refiners that request alternative compliance periods for anti-dumping are already subject to anti-dumping reporting requirements, which include annual compliance reporting, but although refiners of RFG are required to submit quarterly batch reports and laboratory reports, refiners of conventional gasoline under the anti-dumping program are not generally subject to this quarterly reporting requirement. A refiner granted an alternative compliance period for anti-dumping under this rule would become subject to quarterly batch reporting and laboratory reports. Since this constitutes the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the existing Information Collection Request (ICR) for the RFG and anti-dumping program will be submitted to OMB for approval to the collection of any information. A separate **Federal Register** notice will be published regarding the ICR. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.07).

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. 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 our regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. 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, we 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 a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, an agency 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The direct final rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This direct final rule applies to gasoline refiners. Today's action would provide regulated parties with more flexibility with respect to compliance with the anti-dumping requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that we have 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.

We interpret E.O. 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 direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This direct final rule permits flexibility in establishing extended anti-dumping compliance periods in narrow circumstances where a net environmental benefit is expected.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's action does not establish new technical standards or analytical test methods, and does not affect existing technical standards or analytical test methods.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2), and is not subject to the 60 day requirement. This direct final rule will be effective October 23, 2000, unless EPA receives adverse comments or a request for a public hearing on the rule (see **DATES** section above).

J. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Anti-dumping, Reformulated gasoline.

Dated: August 30, 2000.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 USC 7414, 7545, and 7601(a).

* * * * *

2. Section 80.101 is amended by revising paragraph (a) and adding paragraph (k) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31, except as provided in paragraph (k) of this section.

* * * * *

* * *

(k) *Petitions for an alternative anti-dumping averaging period.*

(1) *Eligibility for petition.* (i) The Administrator may grant an averaging period of two, three, four or five years upon petition of a refiner who:

(A) Activates or plans to activate conventional gasoline production at a refinery that has never produced gasoline subject to the anti-dumping requirements of subpart E of this part; and

(B) Faces substantial, demonstrated hardship in meeting the anti-dumping statutory baseline NO_X standard during the early years of production.

(ii) The Administrator will consider the refiner's or refinery's compliance with all applicable Federal, state, and local environmental statutes or requirements in evaluating the petition, including, but not limited to, any applicable stationary source requirement or standards.

(2) *Contents of a petition.* A petition for a four or five year averaging period must be submitted by June 1, 2001. A petition for a two or three year averaging period must be submitted by June 1, 2003. Regardless of the averaging period requested, the petition must include:

(i) The business name and address of the affected refinery and any location(s) where the refiner conducts operations.

(ii) The name, address, phone number, fax number, and e-mail address of the responsible corporate officer and contact person who can provide clarification and explanation with regard to any information in the petition.

(iii) A detailed explanation of why the refinery is eligible for an alternative anti-dumping compliance period under paragraph (k)(1) of this section, including:

(A) Documentation the refinery has never produced gasoline that was subject to the anti-dumping standards under subpart E of this part and

(B) Documentation demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.

(iv) The length of the averaging period requested and a justification for why that length of averaging period is required.

(v) An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.

(vi) The refinery's estimated gasoline production and annual average NO_X level for each of the years for which the alternative averaging period is requested.

(vii) A detailed description of the current refinery equipment and configuration.

(viii) A detailed description of changes to the refinery equipment the refiner intends to complete in order to begin producing gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard, and for such changes the intended dates for events the refiner believes are appropriate for demonstrating reasonable progress towards completion of the changes, including the following events:

(A) Sign the design contract;

(B) Obtain necessary permits;

(C) Obtain construction financing commitments;

(D) Begin construction.

(E) Complete construction

(ix) The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).

(x) A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.

(xi) A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit as calculated in accordance with paragraph (k)(4)(ii) of this section on a quarterly basis.

(xii) A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.

(xiii) A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.

(xiv) Any other information the Administrator may require in order to fully evaluate the refiner's petition.

(xv) The signature of a responsible corporate officer, certifying that the information contained in the petition is true.

(3) *NO_X standards and other requirements applicable to refineries operating under an alternative anti-dumping averaging period.* If a petition by a refiner is approved, the standards described in this paragraph shall be the standards applicable to the refinery identified in the petition for purposes of the anti-dumping program during the period of the alternative averaging period. Except as specifically modified by this section, the refinery must

continue to comply with all other standards applicable under the anti-dumping standards of subpart E of this part.

(i) A refinery shall meet the following deadlines for compliance with the statutory baseline, depending on the length of the alternative averaging period applicable to the refinery:

Length of compliance period in years	Compliance period must start no. later than January 1st of	Refinery must comply with the Statutory Baseline NO_X standard, on average, for gasoline produced beginning with the
2	2004	7th quarter and all subsequent quarters.
3	2003	10th quarter and all subsequent quarters.
4	2002	13th quarter and all subsequent quarters.
5	2001	20th quarter and all subsequent quarters.

(ii) By the end of the applicable alternative averaging period, the gasoline that the refinery has produced over the entire averaging period must result in a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refinery produced gasoline that did not comply with the statutory baseline. For the purposes of this paragraph, the NO_X deficit and the NO_X benefit in tons shall be calculated in accordance with the following equations:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

NO_{XDef} = the NO_X deficit in tons for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NOx standard of 1461 mg/mile.

NO_{Xad} = the average volume weighted NOx emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d = the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

NO_{XBen} = the NO_X benefit in tons during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

NO_{Xab} = the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile.

G_b = the volume of gasoline produced during the quarter(s) the refiner is below the applicable NO_X standard, measured in gallons.

(iii) For each quarter for which the refinery produces gasoline for which there is a NO_X deficit, the refiner shall purchase and bank stationary source NO_x credits that are equal to or greater than the amount of the NO_X deficit generated during the previous quarter, and provide written demonstration of such transaction to the Administrator. These NO_X credits are in addition to any credits purchased during any previous quarters. NO_X deficit is to be calculated on a quarterly basis in accordance with the equation in paragraph (k)(3)(ii) of this section. No NO_X credits purchased by the refiner may contribute to the refinery's compliance with the requirements of paragraphs (k)(3)(i) and (k)(3)(ii). The refinery may sell NO_X credits purchased under this paragraph once the standard in paragraph (k)(3)(i) is met and in an amount equal to the NO_X benefit generated, as calculated on a quarterly basis.

(iv) (A) The refinery shall not generate marketable credits or allotments under the Tier 2 gasoline program provisions of Subpart H of this part during the entire alternative averaging period and shall provide a written statement, on a quarterly basis, certifying that the refinery has not generated, produced, sold, or transferred any such marketable credits or allotments under Subpart H of this part.

(B) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner may generate credits for that portion of the year that was not subject to the alternative averaging period.

(v) The refinery shall market any conventional gasoline it produces that is subject to the requirements of § 80.27 as 9.0 RVP gasoline until the standard in paragraph (k)(3)(i) of this section is met.

(vi) A refinery that has been granted an averaging period under this section must submit the following reports to the Administrator within 30 days of the end of each calendar quarter:

(A) Quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter; and

(B)(*1*) Documents that demonstrate compliance with the requirements under paragraph (k)(3)(iii) and (k)(3)(iv) of this section. including a calculation of the NO_X deficit or benefit for that quarter and a current total, based upon all quarters, indicating the current NO_X deficit or NO_X benefit balance for the refinery; and

(*2*) A statement of the number of NO_X credits purchased or sold during the quarter and a current total, based upon all quarters, indicating the current balance of NO_X credits; and

(*3*) Any contractual documents, or other documents, evidencing the purchasing and banking of NO_X credits.

(vii) The Administrator may specify, as part of the approved petition, deadlines by which a refiner is obligated to take certain actions (including those listed in paragraph (k)(2)(viii) of this section) demonstrating reasonable progress toward completion of the refinery changes necessary to produce gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard.

(viii) The refiner shall submit reports demonstrating compliance with deadline requirements under paragraph (k)(3)(vii) of this section no later than 30 days after the applicable deadline occurs. Upon failure to meet a deadline requirement under paragraph (k)(3)(vii) of this section, the Administrator may accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_X standard under paragraph (k)(3)(i) of this section such that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. The acceleration of the requirement under paragraph (k)(3)(i) of this section, regarding compliance with the annual average statutory baseline NO_X standard, does not affect the applicability of any other standard or requirement applicable to the refinery under this or any other section of the Act (*e.g.,* the refinery must still comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard

by twice as much as the early NO_X deficit generated by the refinery).

(ix) The refiner shall comply with any condition or requirement prescribed by the Administrator as part of the petition approval.

(x) The refinery must comply with all standards in this paragraph and with all applicable anti-dumping standards in Subpart E of this section, except the NO_X standard.

(4) *Approval or disapproval of petitions.* The Administrator will approve or disapprove the petition within six months of receipt, in writing, and in the case of an approval will include any conditions or requirements to which the approval is subject.

(5) *Effective date for alternative averaging period.* (i) For an approved petition, the alternative averaging period shall become effective with the first day of the next calendar quarter, unless the first day of a later calendar quarter is requested.

(ii) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner must demonstrate compliance with anti-dumping standards for gasoline produced during the remainder of that year and must demonstrate such compliance via the annual report as specified in § 80.105.

(6) *Refinery request for a change in alternative averaging period.* At any point during the pendency of an alternative conventional gasoline anti-dumping compliance period the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. In any such case:

(i) A refinery for which a change in the applicable alternative compliance period is approved shall thereafter operate as if the refinery had originally requested and received such alternative compliance period, and shall be subject to the standards and other requirements applicable under such alternative compliance period.

(ii) The Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject;

(iii) Accept as specifically modified by this section, such refinery must continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards; and

(iv) No application may result in an alternative compliance period that extends beyond January 1, 2006.

(7) *Violations under this paragraph (k).* Any person who fails to meet a standard or other requirement under this paragraph (k) shall be liable for penalties under § 80.5. Additionally, in the event that the refiner fails to achieve the required NO_X benefit calculated under paragraph (k)(3)(ii) of this section, any NO_X credits still banked under paragraph (k)(3)(iii) of this section shall be forfeit.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 00–297]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document strengthens the collocation requirements placed upon incumbent local exchange carriers (LECs) pursuant to section 251(c)(6) of the Communications Act of 1934, as amended. The Order on Reconsideration adopts national standards that incumbent LECs must meet in processing physical collocation applications and provisioning physical collocation arrangements. The Order on Reconsideration also resolves issues and adopts requirements regarding adjunct collocation, space denial standards, safe-time work practices, and other collocation-related areas.

DATES: Effective October 10, 2000, except for §§ 51.321(f), 51.323(b) and 51.323(l)(1), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Julie Patterson, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections in this Order on Reconsideration, contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 98–147, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY–B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Second Report and Order

1. The Commission adopts the Order on Reconsideration to further strengthen its collocation rules in response to Sprint Corporation's (Sprint's) June 1999 petition for partial reconsideration or clarification of the Advanced Services First Report and Order. Those rules implement section 251(c)(6) of the Communications Act of 1934, as amended, which requires incumbent LECs to provide for collocation of equipment necessary for interconnection or access to unbundled network elements on terms and conditions that are just, reasonable and non-discriminatory.

2. We conclude in this Order on Reconsideration that national collocation standards are necessary to ensure that incumbent LECs comply with the statutory obligation set forth in section 251(c)(6). We require that, except to the extent a state sets its own standards or the requesting carrier and the incumbent LEC have mutually agreed to alternative standards, an incumbent LEC must notify the requesting telecommunications carrier as to whether a collocation application has been accepted or denied within ten calendar days after receiving the application. We also require that if the incumbent LEC deems a collocation application unacceptable, it must advise the competitive LEC of any deficiencies within this ten calendar day period. We require that an incumbent LEC must provide sufficient detail so that the requesting carrier has a reasonable opportunity to cure each deficiency. We specify that to retain its place in the incumbent LEC's collocation queue, the competitive LEC must cure any deficiencies in its collocation application and resubmit the application within ten calendar days after being advised of them. We also

require that, if the requesting carrier informs an incumbent LEC that physical collocation should proceed within seven calendar days after receiving the incumbent LEC's price quotation, the incumbent LEC must comply with the 90 calendar day provisioning interval set forth below, or any alternative interval set by a state commission or agreed to by the requesting carrier and the incumbent LEC.

3. We require, in addition, that if the competitive LEC fails to meet this deadline, the provisioning interval will begin on the date the requesting carrier informs the incumbent LEC that physical collocation should proceed. We specify that an incumbent LEC must complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premises and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval. We specify that complete provisioning of a collocation arrangement, an incumbent LEC must finish construction in accordance with the requesting carrier's application and turn functioning space over to the requesting carrier.

4. We state that incumbent LECs and competitive LECs must comply with renegotiation clauses in their interconnection agreements in negotiating specific provisions to implement changes in our collocation rules, including the application processing deadline and 90 calendar day physical collocation interval we adopt above. We further conclude that, within October 10, 2000 this Order on Reconsideration, the incumbent LEC must file with the state commission proposed amendments to any tariff or statement of generally available terms and conditions (SGAT) that does not comply with the national standards. These amendments must provide for application processing intervals and physical collocation intervals no longer than the national standards except to the extent a state sets its own standard. We require that, for SGATs, the national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation. We also require that, where a tariff must be amended to reflect the national standards, those standards shall take effect at the earliest time permissible under applicable state requirements.

5. Absent the incumbent LEC's and requesting carrier's mutual consent, the ten calendar day deadline for responding to a collocation application and the 90 calendar day provisioning deadline will serve as maximum intervals, to the extent a state does not set its own deadlines. We require that an incumbent LEC must provide any information the state commission requires Where an incumbent LEC seeks a departure from either deadline, the incumbent also must provide any additional information the state commission requires to resolve whether an incumbent LEC should be allowed to depart from the ten day deadline for telling the requesting carrier whether a collocation application is acceptable or the 90 calendar day provisioning deadline.

6. We conclude that to the extent the state commission permits, the incumbent LEC may require a competitive LEC to pay reasonable application fees or portions of the total collocation charges prior to processing a collocation application or provisioning a collocation agreement. We specify that a competitive LEC's exercise of any right it has to dispute those fees or charges, or any of the rates, terms, or conditions under which an incumbent LEC seeks to provide collocation, shall not relieve the incumbent LEC of its obligation to comply with each of the time limits set forth in this section. We state that an incumbent LEC may require a competitive LEC to forecast its physical collocation demands. We also specify that, absent state action conditioning compliance with application processing and provisioning intervals upon forecasts, a competitive LEC's failure to submit timely forecasts will not relieve the incumbent LEC of its obligation to comply with deadlines described above.

7. We confirm that, when space is exhausted in a particular structure, the incumbent LEC must permit a competitive LEC to collocate in a controlled environmental vault or similar structure that the competitive LEC or a third party constructs adjacent to an incumbent LEC structure. We amend § 51.5 of our rules to make clear that ''premises'' includes all buildings and similar structures owned, leased, or otherwise controlled by the incumbent LEC that house its network facilities, all structures that house incumbent LEC facilities on public rights-of-way, and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these structures.

8. We conclude that an incumbent must make available collocation in adjacent controlled environmental vaults or similar structures, to the extent technically feasible, at premises where physical collocation space is legitimately exhausted, even if virtual collocation space is not exhausted. We specify that if collocation space becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must not require a competitive LEC to move, or preclude an competitive LEC from moving, a collocation arrangement into that structure. Where technically feasible, an incumbent LEC must make physical collocation available in any incumbent LEC structure that houses network facilities and has space available for collocation. Such structures include, to the extent technically feasible, central offices, controlled environmental vaults, controlled environmental huts, cabinets, pedestals, and other remote terminals.

9. In the Advanced Services First Report and Order, 63 FR 45133, August 24, 1998, we required that an incumbent LEC that denies collocation of a competitor's equipment based on safety standards must, within five business days after the denial, provide the requesting carrier with an affidavit attesting that all equipment that the incumbent LEC locates at the premises in question meets or exceeds the safety standard that, according to the incumbent LEC, the competitor's equipment does not meet. In this Order, we require that the affidavit set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

10. We require that an incumbent LEC allow the carrier requesting collocation reasonable access to its selected collocation space while the incumbent LEC prepares that space for collocation. While we do not preclude an incumbent LEC from applying reasonable and nondiscriminatory ''safe-time'' work practices to itself and collocators, we specify requirements for when such a practice will be considered reasonable and nondiscriminatory.

11. In the Local Competition First Report and Order, 61 FR 45476, August 29, 1996, the Commission required any incumbent LEC that denies a request for physical collocation to provide the state commission with detailed floor plans or diagrams of its premises. In this Order, we require that each incumbent LEC provide the state commission with all

information necessary for the state commission to evaluate the reasonableness of the incumbent LEC's and its affiliates' reservations of space for future growth. We require that this information shall include any information the state commission may require to implement its specific space reservation policies, including which space, if any, the incumbent or any of its affiliates have reserved for future use. We also require that the incumbent shall provide the state commission with a detailed description of the specific future uses for which the space has been reserved. We require further that an incumbent LEC shall permit any requesting telecommunications carrier to inspect any floor plans or diagrams that the incumbent LEC provides a state commission, subject to any nondisclosure protections the state commission deems appropriate.

Paperwork Reduction Act of 1995 Analysis

12. The actions contained in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting requirements on the public.

Final Regulatory Flexibility Analysis (FRFA)

13. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Advanced Services Order and Notice of Proposed Rulemaking, 63 FR 45140, August 24, 1998, in CC Docket 98–147. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. We received no comments specifically directed toward the IRFA. In addition, we incorporated the Final Regulatory Flexibility Analysis (FRFA) into the Advanced Services First Report and Order and received no petitions for reconsideration specifically directed toward the FRFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

Need for and Objectives of This Order on Reconsideration and the Rules Adopted Herein

14. This Order continues our efforts to facilitate the development of competition in telecommunications services. In the Advanced Services First Report and Order, we strengthened our collocation rules to reduce the costs and delays faced by competitors that seek to collocate equipment in incumbent LEC premises. In this Order, we take additional steps toward implementing Congress' goals in enacting section 251(c)(6) of the Communications Act by clarifying and further strengthening our collocation rules. These steps should eliminate the major problems competitive LECs have been encountering in seeking to collocate in incumbent LEC premises, and thereby reduce the barriers that frustrate competitive LECs' efforts to compete effectively in the provision of advanced services and other telecommunications services.

Summary of Significant Issues Raised by Public Comments in Response of the FRFA

15. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities and solicited comments on alternatives to our proposed rules that would minimize the impact that might have on small entities. In the Final Regulatory Flexibility Analysis (FRFA), we discussed the impact on small entities of the rules adopted in the Advanced Services First Report and Order. As noted above, we have received no comments or petitions specifically directed to the IRFA or the FRFA. In making the determinations reflected in the Order, however, we have considered the impact of our actions on small entities.

Description and Estimate of the Number of Small Entities Affected by the Order on Reconsideration

16. In the IRFA to the Advanced Services Order and NPRM, we adopted the analysis and definitions set forth in determining the small entities affected by this Order for purposes of this SFRFA. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

17. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, inter alia, LECs, wireline carriers and service providers, interexchange carriers, competitive access providers, operators services providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

18. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

19. Total Number of Telephone Companies Affected. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,144 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees

would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 4,144 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

20. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,231 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

21. Local Exchange Carriers. The Commission has not developed a special size definition of small LECs or competitive LECs. The closest applicable definition for these types of carriers under SBA rules is, again, that used for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 competitive LECs, and 442 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,348 small entity incumbent LECs, 212 competitive LECs, and 442 resellers that may be affected by the decisions and rules adopted in this Order.

Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

22. In this Order, we take a number of steps that may affect small entities that either provide or obtain collocation pursuant to section 251(c)(6) of the Communications Act. The requirements we adopt will require small incumbent LECs to improve their collocation provisioning processes and otherwise change their collocation practices. As Congress contemplated in enacting section 251(c)(6), however, our collocation requirements benefit small competitive LECs in their efforts to compete against incumbent LECs in the provision of telecommunications services, including advanced services. We believe that, on balance, the benefits to small competitive LECs of our actions in this Order far outweigh any burdens the Order places on small incumbent LECs.

23. Specifically, the national standards for physical collocation intervals that we adopt in this Order will decrease the costs and delays small competitive LECs encounter in seeking to collocate at incumbent LEC premises. In particular, the provisioning interval requirements we adopt (paragraphs 12–16 of this Supplemental FRFA), should enable competitive LECs that are small entities to bring services to potential customers more quickly than previously and thus increase their ability to compete against larger firms. Similarly, the adjunct collocation requirements (paragraphs 17 and 18), space denial standards (paragraphs 19 & 21), and safe-time work practice standards (paragraph 20), adopted in the Order should benefit competitive LECs that are small entities helping them obtain the collocation space they need to compete and otherwise helping them streamline their collocation-related operations.

24. We require that, except to the extent a state sets its own standards or the requesting carrier and the incumbent LEC have mutually agreed to alternative standards, an incumbent LEC must notify the requesting telecommunications carrier as to whether a collocation application has been accepted or denied within ten calendar days after receiving the application. We also require that if the incumbent LEC deems a collocation application unacceptable, it must advise the competitive LEC of any deficiencies within this ten calendar day period. We require that an incumbent LEC must provide sufficient detail so that the requesting carrier has a reasonable opportunity to cure each deficiency. We specify that to retain its place in the incumbent LEC's collocation queue, the competitive LEC must cure any deficiencies in its collocation application and resubmit the application within ten calendar days after being advised of them. We also require that, if the requesting carrier informs an incumbent LEC that physical collocation should proceed within seven calendar days after receiving the incumbent LEC's price quotation, the incumbent LEC must comply with the 90 calendar day provisioning interval set forth below, or any alternative interval set by a state commission or agreed to by the requesting carrier and the incumbent LEC.

25. We require, in addition, that if the competitive LEC fails to meet this deadline, the provisioning interval will begin on the date the requesting carrier informs the incumbent LEC that physical collocation should proceed. We specify that an incumbent LEC must complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premises and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval. We specify that complete provisioning of a collocation arrangement, an incumbent LEC must finish construction in accordance with the requesting carrier's application and turn functioning space over to the requesting carrier.

26. We state that incumbent LECs and competitive LECs must comply with renegotiation clauses in their interconnection agreements in negotiating specific provisions to implement changes in our collocation rules, including the application processing deadline and 90 calendar day physical collocation interval we adopt above. We further conclude that, within October 10, 2000 this Order on Reconsideration, the incumbent LEC must file with the state commission proposed amendments to any tariff or statement of generally available terms and conditions (SGAT) that does not comply with the national standards. These amendments must provide for application processing intervals and physical collocation intervals no longer than the national standards except to the extent a state sets its own standard.

We require that, for SGAT, the national standards shall take effect within 60 days after the amendment's filing except to the extent the state commission specifies other application processing or provisioning intervals for a particular type of collocation arrangement, such as cageless collocation. We also require that, where a tariff must be amended to reflect the national standards, those standards shall take effect at the earliest time permissible under applicable state requirements.

27. Absent the incumbent LEC's and requesting carrier's mutual consent, the ten calendar day deadline for responding to a collocation application and the 90 calendar day provisioning deadline will serve as maximum intervals, to the extent a state does not set its own deadlines. We require that an incumbent LEC must provide any information the state commission requires. Where an incumbent LEC seeks a departure from either deadline, the incumbent also must provide any additional information the state commission requires to resolve whether an incumbent LEC should be allowed to depart from the ten day deadline for telling the requesting carrier whether a collocation application is acceptable on the 90 calendar day provisioning deadline.

28. We conclude that to the extent the state commission permits, the incumbent LEC may require a competitive LEC to pay reasonable application fees or portions of the total collocation charges prior to processing a collocation application or provisioning a collocation agreement. We specify that a competitive LEC's exercise of any right it has to dispute those fees or charges, or any of the rates, terms, or conditions under which an incumbent LEC seeks to provide collocation, shall not relieve the incumbent LEC of its obligation to comply with each of the time limits set forth in this section. We state that an incumbent LEC may require a competitive LEC to forecast its physical collocation demands. We also specify that, absent state action conditioning compliance with application processing and provisioning intervals upon forecasts, a competitive LEC's failure to submit timely forecasts will not relieve the incumbent LEC of its obligation to comply with deadlines described above.

29. We confirm that, when space is exhausted in a particular structure, the incumbent LEC must permit a competitive LEC to collocate in a controlled environmental vault or similar structure that the competitive LEC or a third party constructs adjacent to an incumbent LEC structure. We amend § 51.5 of our rules to make clear that ''premises'' includes all buildings and similar structures owned, leased, or otherwise controlled by the incumbent LEC that house its network facilities, all structures that house incumbent LEC facilities on public rights-of-way, and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these structures.

30. We conclude that an incumbent must make available collocation in adjacent controlled environmental vaults or similar structures, to the extent technically feasible, at premises where physical collocation space is legitimately exhausted, even if virtual collocation space is not exhausted. We specify that if collocation space becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must not require a competitive LEC to move, or preclude an competitive LEC from moving a collocation arrangement into that structure. Where technically feasible, an incumbent LEC must make physical collocation available in any incumbent LEC structure that houses network facilities and has space available for collocation. Such structures include, to the extent technically feasible, central offices, controlled environmental vaults, controlled environmental huts, cabinets, pedestals, and other remote terminals.

31. In the Advanced Services First Report and Order, we required that an incumbent LEC that denies collocation of a competitor's equipment based on safety standards must, within five business days after the denial, provide the requesting carrier with an affidavit attesting that all equipment that the incumbent LEC locates at the premises in question meets or exceeds the safety standard that, according to the incumbent LEC, the competitor's equipment does not meet. In this Order, we require that the affidavit set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

32. We require that an incumbent LEC allow the carrier requesting collocation reasonable access to its selected collocation space while the incumbent LEC prepares that space for collocation. While we do not preclude an incumbent LEC from applying reasonable and nondiscriminatory ''safe-time'' work practices to itself and collocators, we specify requirements for when such a practice will be considered reasonable and nondiscriminatory.

33. In the Local Competition First Report and Order, the Commission required any incumbent LEC that denies a request for physical collocation to provide the state commission with detailed floor plans or diagrams of its premises. In this Order, we require that each incumbent LEC provide the state commission with all information necessary for the state commission to evaluate the reasonableness of the incumbent LEC's and its affiliates' reservations of space for future growth. We require that this information shall include any information the state commission may require to implement its specific space reservation policies, including which space, if any, the incumbent or any of its affiliates have reserved for future use. We also require that the incumbent shall provide the state commission with a detailed description of the specific future uses for which the space has been reserved. We require further that an incumbent LEC shall permit any requesting telecommunications carrier to inspect any floor plans or diagrams that the incumbent LEC provides a state commission, subject to any nondisclosure protections the state commission deems appropriate. As indicated, all these requirements will produce benefits to small competitive LECs that far outweigh any burdens the Order places on small incumbent LECs.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

34. In this Order, we clarify and strengthen our collocation rules in implementation of section 251(c)(6) of the Communications Act. These actions will affect both telecommunications carriers that request collocation and the incumbent LECs that, under section 251(c)(6), must provide collocation. As indicated above, both groups of carriers include entities that, for purposes of this SFRFA, are classified as small entities.

35. The record makes clear that, despite our actions in the Advanced Services First Report and Order, incumbent LECs have continued to impede requesting telecommunications carriers collocation efforts. Our actions in this Order should benefit requesting telecommunications carriers, many of which may be small entities, by reducing barriers they encounter in seeking to compete effectively in the provision of advanced services and other telecommunications services. These actions include requiring that, where a state does not set its own standard, an incumbent LEC must

provide physical collocation, including cageless collocation, within 90 calendar days after receiving a collocation application.

36. In taking the actions in this Order, we have considered significant alternatives, such as setting maximum collocation provisioning intervals either shorter or longer than 90 calendar days. We selected 90 calendar days, however, based on the balance of competing considerations, including competitive LECs' need for a provisioning interval of relatively short duration. We also considered adopting shorter collocation intervals for particular types of collocation arrangements, different adjunct collocation requirements, and requirements regarding reserving space for future use, but instead invite comment on those requirements in the Second Further Notice (publish elsewhere in this issue). Finally, any alternative space denial and safe-time work practice requirements would decrease the ability of competitive LECs that are small entities to compete effectively. In choosing among the various alternatives, we have sought to minimize the adverse economic impact on carriers, including those that are small entities. We recognize that, while our actions should benefit competitive LECs, they may impose economic burdens on incumbent LECs, as Congress envisioned when it enacted section 251(c)(6). In comparison to incumbent LECs, however, many competitive LECs are small, entrepreneurial businesses. Our actions in this Order should reduce the costs and delays these competitive LECs encounter in seeking to collocate in incumbent LEC premises.

Report to Congress

37. The Commission will send a copy of the Order, including this SFRFA, in a report to be sent to Congress pursuant to the SBREFA. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order,* including the SFRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and the SFRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Procedural Matters

38. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the Petition for Partial Reconsideration and/or Clarification filed June 1, 1999, by Sprint Corporation *Is Granted* to the extent indicated herein and otherwise *Is Denied.*

39. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that part 51 of the Commission's rules, 47 CFR part 51, *Is Amended,* as set forth in Rule changes.

40. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the requirements and rules adopted in this Order on Reconsideration not pertaining to new or modified reporting or recordkeeping requirements *Shall Become Effective* October 10, 2000.

41. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the requirements and rules adopted in this Order on Reconsideration pertaining to new or modified reporting or recordkeeping requirements are subject to approval by the Office of Management and Budget (OMB) as prescribed by the Paperwork Reduction Act and *Shall Become Effective* upon announcement in the **Federal Register** of OMB approval.

42. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and this Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98, including the Supplemental Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications, Common carriers, Telecommunications, Collocation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

1. The authority for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.5 is amended by revising the definition of ''premises'' and by adding in alphabetical order a definition of ''day'' to read as follows:

§ 51.5 Terms and definitions.

* * * * *

Day. Day means calendar day.

* * * * *

Premises. Premises refers to an incumbent LEC's central offices and serving wire centers; all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities; all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, buildings, and structures.

* * * * *

3. Section 51.321 is amended by revising paragraph (f) to read as follows:

§ 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

* * * * *

(f) An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. These floor plans or diagrams must show what space, if any, the incumbent LEC or any of its affiliates has reserved for future use, and must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not only the area in which space was denied, without charge, within ten days of the receipt of the incumbent's denial of space. An incumbent LEC must allow a requesting telecommunications carrier reasonable access to its selected collocation space during construction.

* * * * *

4. Section 51.323 is amended revising paragraphs (b) introductory text, (f)(4), and (k)(3), and adding paragraph (l) to read as follows:

§ 51.323 Standards for physical collocation and virtual collocation.

* * * * *

(b) Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards or any other performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety. Equipment used for interconnection or access to unbundled network elements includes, but is not limited to:

* * * * *

(f) * * *

(4) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that neither the incumbent LEC nor any of its affiliates may reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

* * * * *

(k) * * *

(3) *Adjacent space collocation.* An incumbent LEC must make available, where physical collocation space is legitimately exhausted in a particular incumbent LEC structure, collocation in adjacent controlled environmental vaults, controlled environmental huts, or similar structures located at the incumbent LEC premises to the extent technically feasible. The incumbent LEC must permit a requesting telecommunications carrier to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by the incumbent LEC, the requesting carrier, or a third-party. If physical collocation space becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must not require a carrier to move, or prohibit a competitive LEC from moving, a collocation arrangement into that structure. Instead, the incumbent LEC must continue to allow the carrier to collocate in any adjacent controlled environmental vault, controlled environmental vault, or similar structure that the carrier has constructed or otherwise procured.

(l) An incumbent LEC must offer to provide and provide all forms of physical collocation (*i.e.,* caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

(1) Within ten days after receiving an application for physical collocation, an incumbent LEC must inform the requesting carrier whether the application meets each of the incumbent LEC's established collocation standards. A requesting carrier that resubmits a revised application curing any deficiencies in an application for physical collocation within ten days after being informed of them retains its position within any collocation queue that the incumbent LEC maintains pursuant to paragraph (f)(1) of this section.

(2) Except as stated in paragraphs (l)(3) and (l)(4) of this section, an incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established collocation application standards.

(3) An incumbent LEC need not meet the deadline set forth in paragraph (l)(2) of this section if, after receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed.

(4) If, within seven days of the requesting carrier's receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed, then the incumbent LEC need not complete provisioning of a requested physical collocation arrangement until 90 days after receiving such notification from the requesting telecommunications carrier.

[FR Doc. 00–22889 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

Insurance—Partial or Total Immunity From Tort Liability for State Agencies and Charitable Institutions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to allow State agencies and charitable institutions partial or total immunity from tort liability on NASA contracts.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Kall, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0459.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 25, 2000 (65 FR 24170–24171). No comments were received. This final rule adopts the proposed rule without change.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public 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 1828 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1828 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

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

PART 1828—BONDS AND INSURANCE

2. Revise sections 1828.311–1 and 1828.311–2, and add section 1828.311–270 to read as follows:

1828.311–1 Contract clause.

The contracting officer must insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–1, unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311–2 Agency solicitation provisions and contract clauses.

1828.311–270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at 1852.228–80, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228–7 and the associated clause at 1852.228–81, Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at 1852.228–82, Insurance—Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend Part 1852 by adding sections 1852.228–80, 1852.228–81, and 1852.228–82 to read as follows:

1852.228–80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311–270(b), insert the following provision:

Insurance—Immunity From Tort Liability, September, 2000

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228–7, Insurance—Liability To Third Persons, and the associated NFS clause 1852.228–81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution. the clause at NFS 1852.228–82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

1852.228–81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311–270(c), insert the following clause:

Insurance—Partial Immunity From Tort Liability, September 2000

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228–7, Insurance—Liability To Third Persons, provided that the contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228–7, for liabilities to third person for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

1852.228–82 Insurance—Total Immunity From Tort Liability.

As prescribed in 1828.311–270(d), insert the following clause:

Insurance—Total Immunity From Tort Liability, September 2000

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the contracting officer and promptly furnish copies of all pertinent papers received by the contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

[FR Doc. 00–23006 Filed 9–7–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[RSPA–97–2094; Amdt. Nos. 192–89; 195–69]

RIN 2137—AC54

Pipeline Safety: Underwater Abandoned Pipeline Facilities

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This rule will require the last operator of an abandoned natural gas or hazardous liquid pipeline facility that is located offshore or crosses under, over or through a commercially navigable waterway to submit a report of the abandonment to the Secretary of Transportation. The results of this final

rule will be a Congressionally mandated central depository of information about underwater abandoned pipeline facilities that the Secretary of Transportation will make available to appropriate Federal and State agencies.

DATES: This rule becomes effective October 10, 2000.

FOR FURTHER INFORMATION CONTACT: You may contact L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC, 20590, or via e-mail to le.herrick@rspa.dot.gov regarding this final rule. You may contact the Dockets Unit, 202–366–5046, for copies of this final rule or material that is referenced herein.

SUPPLEMENTARY INFORMATION:

A. Background

Underwater natural gas and hazardous liquid pipeline facilities are being abandoned at an increasing rate as older facilities reach the end of their use. This trend is expected to continue. Presently, there is no one location where these records of abandonment are maintained. In 1992, Congress directed the Secretary of Transportation to require:

(A) The operator of a pipeline facility abandoned after October 24, 1992, shall report the abandonment to the Secretary in a way that specifies whether the facility has been abandoned properly according to applicable United States Government and State requirements.

(B) Not later than October 24, 1995, the operator of a pipeline facility abandoned before October 24, 1992, shall report to the Secretary reasonably available information related to the facility, including information that a third party possesses. The information shall include the location, size, date, and method of abandonment, whether the facility has been abandoned properly under applicable law, and other relevant information the Secretary may require. Not later than April 24, 1994, the Secretary shall specify how the information shall be reported. The Secretary shall ensure that the Government maintains the information in a way accessible to appropriate Government agencies and State authorities. 49 U.S.C. 60108(c)(6).

On August 30, 1999 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 47157). In this notice we proposed to implement this Congressional mandate by requiring all operators who have abandoned pipeline facilities offshore or crossing over under or through commercially navigable waterways to report that abandonment to the Secretary of Transportation through the Research and Special Programs Administration's (RSPA) Associate Administrator for Pipeline Safety. The report would include all reasonably available information related to the facility, including information in the possession of a third party.

NPRM Comments

We received 11 comments to the proposal. Commenters included regulated natural gas distribution companies; refining companies; an interstate natural gas transmission company; natural gas companies engaged in exploration, development, production and gathering; a utility industry consortium; and industry trade organizations. These comments are available in the docket for this rulemaking.

Navigable Waterways

Comment: Several commenters expressed the view that the term, ''navigable waters,'' was open to various interpretations and should be more clearly described in the regulation.

Response: We agree and have included a specific description in this final rule. Under this rule, the affected navigable waterways are those waterways ''where a substantial likelihood of commercial navigation exists.''

Further guidance in determining the affected waterways is available in a geographic database of navigable waterways in and around the United States created by Oak Ridge National Laboratory and Vanderbilt University. The database, called the National Waterways Network, was created with input from the National Waterway GIS Design Committee, which is comprised of representatives of the U.S. Army Corps of Engineers, U.S. DOT's Bureau of Transportation Statistics (BTS), Volpe National Transportation Systems Center, Maritime Administration, Military Traffic Management Command, Tennessee Valley Authority, U.S. Environmental Protection Agency, U.S. Bureau of Census, U.S. Coast Guard, and the Federal Railroad Administration. The database includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from BTS' website: http://www.bts.gov/gis/ntatlas/networks.html.

We will include a map of the commercially navigable waterways portion of the National Waterways Network database in the National Pipeline Mapping System. Operators will be able to determine which areas of their pipeline intersect these designated commercially navigable waterways, and the public and other government agencies will be able to view pipelines in relation to commercially navigable waterways.

Colorado

Comment: A commenter asked if there are any navigable waterways under this rule in the State of Colorado.

Response: No.

Retroactive Requirement

Comment: Several commenters alleged that a requirement to provide complete information for previously abandoned pipeline facilities was overly burdensome, if not impossible, because the regulations currently in effect require an operator to maintain records for the life of the pipeline facility and, once abandoned, the records are not generally kept.

Response: The requirement for the last operator of a facility to report all reasonably available information, including that which a third party posses has been mandated by Congress. Therefore, we will require operators to provide any information that they have reasonably available for all pipelines which have been abandoned before October 10, 2000. In order to reduce the burden and to provide sufficient time for operators to integrate the reporting requirements into their routine operations, the report for previously abandoned lines will be due six months from the effective date of the rule.

Multiple lines

Comment: A commenter asked if one or multiple reports were required in a situation where a pipeline operator may be abandoning more than one pipeline facility.

Response: The operator would be required to file separate reports for each abandoned pipeline facility.

Town Gas

Comment: A commenter expressed the view that an unexpected, potential inclusion of some long abandoned ''town gas'' lines which have been abandoned for decades would be included in this rule and that such a requirement would place an impossible burden on many utility companies.

Response: The retroactive reporting requirement is for information which is readily available to the operator.

Reporting Burden

Comment: Many commenters agreed that the burden for reporting future abandonments would be slight,

although they believed that we had underestimated the actual response time.

Response: In our cost benefit analysis for this final rule we have increased the estimated reporting time to 6 hours per report for future abandonments. This final rule does not require operators to expend resources locating information for previously abandoned lines that is not readily available.

Application

Comment: A commenter recommended that the reporting requirement only apply to transmission lines.

Response: The requirement applies to all lines subject to 49 CFR parts 192 and 195.

Certification

Comment: A commenter asks if it is correct to assume that the required certification stating that the facility has been abandoned according to all applicable State and Federal requirements means that it was abandoned according to all applicable requirements at the time of abandonment and not current requirements.

Response: Yes. A certification could state: ''To the best of my knowledge, I have provided all of the requested information that is reasonably available about the subject abandoned pipeline facility and, to the best of my knowledge, this abandoned pipeline facility was abandoned in accordance with all applicable State and Federal requirements in effect at the time of the abandonment.''

Technical Committee Consideration

We presented the NPRM to the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) at a meeting in Washington, DC on November 3, 1999. The TPSSC is RSPA's statutory advisory committee for gas pipeline safety and the THLPSSC is RSPA's statutory advisory committee for hazardous liquid pipeline safety. Each committee has 15 members, representing industry, government, and the public, who are qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. Although this final rule does not impose a safety standard, the THLPSSC voted 3 in favor and 5 against the proposal and the TPSSC voted 1 in favor and 10 against the proposal. A transcript and report of the committee's consideration of the NPRM is available in the docket.

The technical advisory committees discussion centered on the cost effectiveness and reasonableness of the proposal. In this final rule we have addressed these concerns by further clarifying the intended scope of the rule, and have provided a more detailed description of commercially navigable waterways, We have also clarified that retroactive reports will be limited to that information which is readily available to the operator. We have also increased the potential for effective use of the information by requesting that the information on future abandonments be submitted in a manner which will yield uniform and statistically comparable data. Operators are requested to report abandonments to the National Pipeline Mapping System's National Repository. Incorporating this information into a national data base will reduce the costs of maintaining separate data on abandoned lines and increase the effective use of the information.

Further advisory committee discussion addressed whether information on abandoned facilities could be obtained from other government agencies. We agree that a collection of information held by other agencies will augment the available information. We have initiated discussions with the Department of the Interior's Minerals Management Service, U.S. Army Corp of Engineers and the various States to determine if the information they currently hold is compatible with our information collection requirements.

However, the Congressional mandate requires the Secretary of Transportation to collect the information from the operators and to make that information available to other Federal and State agencies.

B. Report Requirements

The preferred method is to submit data on abandoned pipeline facilities to the National Pipeline Mapping System (NPMS) in accordance with the NPMS ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions.'' To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at *www.npms.rspa.dot.gov* or contact the NPMS National Repository at 703–317–3073. Digital data is preferred, but hard copy submissions are acceptable if they meet the NPMS Standards. In addition to the NPMS required attributes, operators are required to submit the date of abandonment, attributes for diameter, method of abandonment, and certification that the abandonment was completed according to applicable laws. Operators may refer to the NPMS Standards for details in preparing data submissions. The NPMS Standards also includes details of how to submit data and to whom. Alternatively, data may be submitted by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax: (202) 366–4566; e-mail: roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility was abandoned according to all applicable laws.

Regulatory Analysis and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). Those operators who abandon pipeline facilities should have the required information to compile the abandonment report readily available because of the extensive pipeline abandonment procedures required by other agencies. The report on previously abandoned pipeline facilities is limited to readily available information on size, date of abandonment, method of abandonment, and whether the pipeline facility was abandoned in accordance with applicable laws in effect at the time of the abandonment.

Further, several commenters stated that OPS underestimated the time to prepare and file the report. A commenter contended the report would take 4–8 hours. Assuming 400 abandonments per year, the cost of this rule would be $96,000 annually. (400 reports × 6 hours = 2400 hours × $40 hourly wage = $96,000). Because of the minimal cost of this rule no regulatory evaluation was necessary.

B. Federalism Assessment

This final rule will not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), we

have determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Executive Order 13084—Indian Tribal Governments

We believe that revised regulations from this final rule would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the estimated $96,000 annual cost of the rule (discussed above), RSPA believes this final rule would not have a significant economic impact on a substantial number of small entities. Because the average time to write a report required by this proposed regulation would be 6 hours of operator time per abandonment, the impact of this regulation will be minimal. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

This final rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of over $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the Congressional mandate.

F. Paperwork Reduction Act

This final rule contains information collection requirements in 49 CFR 192.727 and 49 CFR 195.59 for the last operator of an abandoned underwater pipeline facility. This requirement was previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number is 2137–0601. However, a revised paperwork reduction analysis has been submitted to OMB to reflect revised burden estimate numbers.

G. National Environmental Policy Act

We have analyzed this final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this final rule will not significantly affect the quality of the human environment. An Environmental Assessment is in the docket.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to reference this action in the Unified Agenda.

List of Subjects

49 CFR Part 192

Hazardous liquid, Natural gas, Pipeline safety, Pipelines, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA hereby amends parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

Subpart A—General

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.3 is amended by adding the definition of *Abandoned* in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Abandoned means permanently removed from service.

* * * * *

3. Section 192.727 is amended by adding paragraph (g) to read as follows:

§ 192.727 Abandonment or deactivation of facilities.

* * * * *

(g) For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility.

(1) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions.'' To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at *www.npms.rspa.dot.gov* or contact the NPMS National Repository at 703–317–3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(2) Data on pipeline facilities abandoned before October 10, 2000 must be filed by before April 10, 2000. Operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.2 is amended by adding the definition of *Abandoned* in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Abandoned means permanently removed from service.

* * * * *

3. Part 195 is ameneded by adding a new § 195.59 to read as follows:

§ 195.59 Abandoned underwater facilities report.

For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility.

(a) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions.'' To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.rspa.dot.gov or contact the NPMS National Repository at 703–317–3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(b) Data on pipeline facilities abandoned before October 10, 2000 must be filed by before April 10, 2001. Operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

4. Section 195.402(c)(10) is revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(1) * * *

(10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards. For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through commercially navigable waterways the last operator of that facility must file a report upon abandonment of that facility in accordance with § 195.59 of this part.

* * * * *

Issued in Washington, DC, on August 28, 2000.

John P. Murray,

Acting Deputy Administrator.

[FR Doc. 00–22986 Filed 9–7–00; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 65, No. 175
Friday, September 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 and A300–600 series airplanes. This proposal would require verifying the correct location of the labels of the hydraulic pipes supplying the strut unlocking actuator of the left-hand main landing gear (MLG), and of the pipes of the left- and right-hand cross brace; reidentifying the pipes; and replacing any incorrectly located label with a new label. This action is necessary to prevent cross connection of the hydraulic hoses or pipes that supply the main strut unlocking actuator, and collapse of the MLG under lateral taxiing loads. This action is intended to address the identified unsafe condition.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000-NM–154-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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–154–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 and A300–600 series airplanes. The DGAC advises that an operator reported the collapse of the left-hand main landing gear (MLG) during taxiing. Such collapse of the MLG resulted in severe damage to the airplane and the engine.

Investigation of the incident indicated that the collapse of the MLG was caused by cross connection of the hydraulic hoses that supply the strut unlocking actuator of the left-hand MLG. In addition, the labeling of the ''up'' and ''down'' hydraulic pipes, which are attached to the MLG and connected to the hoses, was inverted. The cross connection of the hoses, in combination with the inverted labeling, caused the MLG to become unlocked, which led to its collapse under lateral taxiing loads. Additional investigations revealed that several other airplanes in the fleet had been delivered with similar inverted labeling of the hydraulic pipes of the left-hand MLG. (This installation on the right-hand MLG was labeled correctly.)

Cross connection of the hydraulic hoses or pipes that supply the main strut unlocking actuator, if not corrected, could lead to collapse of the MLG under lateral taxiing loads.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–32A0437 (for Model A300 series airplanes) and A300–32A6080 (for Model A300–600 series airplanes), both dated April 5, 2000. These service

bulletins describe procedures for verifying the correct location of the labels of the hydraulic pipes supplying the strut unlocking actuator of the left-hand main landing gear (MLG), and of the pipes of the left-and right-hand cross brace; reidentifying the pipes; and replacing any incorrectly located label with a new label. The service bulletins reference Airbus Service Bulletins A300–57A0234 and A300–57A6087, as well as Messier-Dowty International Service Bulletin No. 470–32–792, as additional sources of service information for accomplishment of the specified actions.

Accomplishment of the actions specified in Airbus Service Bulletins A300–32A0437 and A300–32A6080 is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–204–309(B), dated May 17, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 87 Model A300 and A300–600 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the vendor at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,220, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2000–NM–154–AD.

Applicability: All Model A300 and A300–600 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 cross connection of the hydraulic hoses or pipes that supply the main strut unlocking actuator, which could lead to consequent collapse of the MLG under lateral taxiing loads, accomplish the following:

(a) Within 1,000 flight hours or 3 months after the effective date of this AD, whichever occurs first: Verify the correct location of the labels of the hydraulic pipes supplying the strut unlocking actuator of the left-hand main landing gear (MLG), and of the pipes of the left- and right-hand cross brace, and reidentify the pipes, in accordance with Airbus Service Bulletin A300–32A0437 (for Model A300 series airplanes) or A300–32A6080 (for Model A300–600 series airplanes), both dated April 5, 2000, as applicable. If any label is located incorrectly, prior to further flight, replace the label with a new label in accordance with the applicable service bulletin.

Note 2: The service bulletins reference Airbus Service Bulletins A300–57A0234 and A300–57A6087, as well as Messier-Dowty International Service Bulletin No. 470–32–792, as additional sources of service information for accomplishment of the specified actions.

Alternative Methods of Compliance

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

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–204–309(B), dated May 17, 2000.

Issued in Renton, Washington, on September 1, 2000.

Donald L. Riggin,

Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–23041 Filed 9–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6864–9]

Establishment of Alternative Compliance Periods Under the Anti-Dumping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Clean Air Act as amended in 1990 (''the Act'') directs the Environmental Protection Agency (''EPA'' or ''we'') to issue regulations requiring reformulated gasoline for major metropolitan areas with the worst ozone air pollution problems. Other areas with ozone levels exceeding the public health standards may voluntarily choose to participate in the federal reformulated gasoline program. In order to ensure that the ''dirtier'' components of reformulated gasoline are not dumped into gasoline sold in areas not participating in the reformulated gasoline program (''conventional gasoline'' areas), the Act requires EPA to ensure that the quality of conventional gasoline does not fall below 1990 levels. The Act also mandates that we establish an appropriate compliance period or compliance periods associated with meeting the anti-dumping standards. Under the existing regulations for reformulated gasoline and anti-dumping, the compliance period is one year. However, we believe that in certain limited circumstances a longer conventional gasoline anti-dumping may be appropriate on a temporary basis. Such an alternative compliance period would be only appropriate for a refiner who produces conventional gasoline and who is starting up a refinery and facing significant hardship in complying with the anti-dumping statutory baseline NO_X standard. Moreover, we believe that it would be appropiate for any refinery subject to an alternative compliance period to meet additional substantive and administrative requirements to ensure that there is no environmental detriment as a result of the longer averaging period. This notice of proposed rulemaking sets forth proposed procedures for establishing alternative compliance periods under the anti-dumping program and the proposed standards applicable to refineries operating under such compliance periods.

DATES: Comments or a request for a public hearing must be received by October 10, 2000.

ADDRESSES: If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460, (202) 564–8987. Materials relevant to this proposed rule have been placed in docket A–2000–27 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. You may be charged a reasonable fee for photocopying services.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the proposed action are parties that produce conventional gasoline. Regulated categories and entities include:

Category	Examples
Industry	Gasoline refiners

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists all entities that we are now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be regulated by this proposed action. To determine whether your business would be regulated by this proposed action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding section of this document.

II. Background

This section summarizes the anti-dumping program. Since refiners who request flexibility under today's proposed rule are likely to elect to use sulfur-reducing technologies early in order to meet production requirements under this proposed rule, a brief overview of the Tier 2 gasoline program is included as well.

The Anti-Dumping Program

The Clean Air Act required EPA to establish rules for reformulated gasoline (RG) designed to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants. Reformulated gasoline is required to be used in specific metropolitan areas with the worst ozone problems. Several other areas with ozone levels exceeding the public health standard have voluntarily chosen to use RFG. Additionally, the Act required us to establish regulations covering all gasoline that is not reformulated. Such gasoline is called conventional gasoline, and the standards governing it are called the anti-dumping standards. We issued final reformulated gasoline and anti-dumping regulations on December 15, 1993[1] and the standards in those regulations became effective in January 1995.

The purpose of anti-dumping standards is to ensure that the quality of a refiner's conventional gasoline does not get worse once the reformulated gasoline program begins. To ensure that this does not happen, the Act requires that each refiner's conventional gasoline be at least as clean as the gasoline produced by that refiner during a specific ''baseline'' year. The baseline reference year specified in the Act is 1990. The anti-dumping program specifically governs the exhaust toxics and NO_X emissions of conventional gasoline. These emissions are determined using the Complex Model, a tool which uses the fuel specifications, or parameters, of a gasoline blend to calculate which emissions associated with that gasoline. The fuel parameters included in the Complex Model are aromatics, olefins, benzene, sulfur, oxygen content and oxygenate type, the percent of fuel evaporated at 200°F and 300°F (E200 and E300, respectively) and Reid vapor pressure, or RVP.

[1] ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule,'' 59 FR 7812 (February 16, 1994). See 40 CFR part 80, subparts D, E, and F.

Under the anti-dumping program, each refinery and importer has an individual baseline consisting of a set of values for the Complex Model fuel parameters and the exhaust toxics and NO_X emissions associated with those values representing the specification of the gasoline that the refiner produced in 1990. An individual baseline can be one of two types. The first type is the unique individual baseline. A refinery or importer has a unique individual baseline if it was in operation for at least 6 months in 1990 and had sufficient data and supporting analysis to determine the actual quality of its 1990 gasoline to EPA's satisfaction. Those with unique individual baselines also have an associated individual baseline volume, which is the volume of gasoline produced or imported by that refiner in 1990. The other type of individual baseline is the statutory baseline. The statutory baseline consists of a set of fixed values for the Complex Model fuel parameters and the emissions associated with those values which represent the average quality of all gasoline produced or sold in the United States in 1990. The summer portion of the statutory baseline was specified in the Clean Air Act; the corresponding winter portion was developed by EPA. Together, the summer and winter portions form the annual average statutory baseline which is specified in 40 CFR Part 80.91(c)(5). There is no individual baseline volume for those refineries or importers for which the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is determined on an annual basis. Each batch of gasoline is evaluated under the appropriate summer or winter portion of the Complex Model; the resulting emissions calculated for batch are volume-weighted to determine the annual average exhaust toxics and NO_X emissions for the refinery or importer. The resulting annual average emissions are compared to the baseline emissions values to determine whether the refinery or importer is in or out of compliance with its anti-dumping standards.

Section 211(k)(8)(D) of the Act directs us to establish ''an appropriate compliance period or compliance periods'' to be used for assessing compliance with the anti-dumping regulations. As mentioned above, we have established a one year compliance period for anti-dumping. A one year compliance period is consistent with other fuels programs utilizing averaging and annual reporting, including the RFG program. Generally, a one year compliance period is desirable because it provides an effective monitoring period for environmental purposes while permitting flexibility with respect to averaging over the calendar year. A one year period gives more assurance that gross violations will not occur before the violation is discovered and appropriate action is taken and that those responsible for the violation are held accountable. A one year period prevents a company from violating for several years, generating a long-term environmental detriment, and then going out of business before it can be held accountable. A one year period is also simple for compliance accounting purposes. Although we chose the one year compliance period for the reasons just mentioned, we recognize that the Act permits us to establish alternative anti-dumping compliance periods by regulation.

Tier 2 Gasoline

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks through implementation of programs like RFG and anti-dumping. Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light duty trucks will continue to be significant contributors to air pollution. In light of this trend and to build upon programs aimed at reducing emissions from motor vehicles and motor vehicle fuels, EPA recently issued regulations establishing lower sulfur content for all gasoline [2] (*i.e.,* ''Tier 2 gasoline'') and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, and vans and pick-up trucks under 8,500 lbs. The Tier 2 program will also reduce ozone and particulate matter (PM) pollution. Gasoline sulfur levels significantly affect NO_X emissions. Since NO_X emissions are ozone precursors, a reduction in the sulfur level of gasoline will reduce ozone pollution. The level of gasoline sulfur control required under the Tier 2 program will also benefit the environment by directly reducing emissions of sulfur compounds.

The Tier 2 gasoline standards will be fully implemented by 2006 by all refiners except for those subject to geographic phase-in area (GPA) requirements, who have until 2007, and certain other qualifying refiners, who have until 2008. (If a hardship extension is granted, an individual refiner may have until 2010 to meet the final standards.) The Tier 2 program is structured to permit averaging in order to meet the sulfur standard, with an average sulfur content standard of 30 ppm and a per gallon sulfur limit of 80 ppm by the date of full implementation. Benefits from the Tier 2 gasoline program may be seen more immediately, as some refiners are expected to start lowering sulfur levels as early as this year. Those who lead the way in reducing sulfur earlier than required may generate marketable credits or allotments. As with the RFG and anti-dumping programs, compliance is demonstrated based upon a one year compliance period.

[2] ''Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). See also 40 CFR part 80, subpart H for regulations applicable to gasoline sulfur.

III. Today's Proposed Action

Need for and Purpose of Today's Proposed Action

As discussed above, section 211(k)(8)(D) of the Act directs EPA to establish an appropriate compliance period or compliance periods for the purpose of assessing compliance with anti-dumping requirements. At the present time, the only compliance period that has been established for anti-dumping is a one year compliance period. The one year compliance period is consistent with the one year period established under other existing fuels programs and, at the time the anti-dumping regulations were developed, there was no compelling reason or identified benefit to specifying any alternative compliance period.

We believe that achieving the Tier 2 gasoline sulfur reductions, at the refinery level, as soon as possible is an extremely valuable mechanism for reducing vehicle emissions, perhaps more so than any other recently promulgated gasoline regulation. We are also aware of at least one refinery in a start-up mode which would be able to achieve the applicable Tier 2 gasoline sulfur reductions earlier than required, but would not be able to comply with its anti-dumping standard, which is the statutory baseline, in early production years. In order to comply with its anti-dumping standard, the refiner would have to delay the start-up process and significantly delay the time frame in which it could produce gasoline meeting the Tier 2 gasoline sulfur standards.

Because we believe that achieving the Tier 2 gasoline sulfur levels is critical to reducing ozone levels by reducing emissions of the ozone precursor NO_X (see the discussion in ''Summary of Today's Proposed Action'' below), we

believe it would be appropriate to allow an alternative anti-dumping compliance period for a refinery in start-up mode, provided that the refiner can show that the refinery will achieve the Tier 2 gasoline sulfur levels earlier than otherwise required. At the same time, we want to ensure that no environmental detriment occurs as a result of the flexibility we are providing, and have included other requirements the refinery would have to meet which will provide the appropriate environmental protection. The details of the proposed flexibility are described below.

Summary of Today's Proposed Action

We are proposing to permit a refinery in start-up mode which is unable to meet its anti-dumping standard during the start-up process, but which would otherwise be able to meet the Tier 2 gasoline sulfur standards earlier than required, to petition the Agency for an alternative compliance period. The Tier 2 standards for most refiners take effect in 2006. (See ''Tier 2 Gasoline,'' above, for a more detailed discussion of refiner compliance dates.) A refinery eligible for this proposed relief must be starting up production of conventional gasoline and must never have produced conventional gasoline that was subject to the anti-dumping regulations. To ensure that the refinery will meet the applicable Tier 2 gasoline standards early, the alternative compliance period would be limited to a two to five year span, as determined by the Agency. Because of the other requirements associated with this proposed rule, we believe that a refinery would choose to request the shortest alternative compliance period possible. Additionally, a refiner would have to show that it would be unable to meet its anti-dumping NO_X requirement under the current, one year compliance period. While the anti-dumping standard for a refinery involves both exhaust toxics and NO_X emissions, we believe that the proposed alternative compliance period should only be available to a refinery upon a showing that it would otherwise be unable to meet its NO_X standard. This is because sulfur significantly affects NO_X emissions,[3] and decreasing sulfur will result in significant NO_X emission reductions by moving toward the goal of the low sulfur levels required by the Tier 2 standards. Though a refiner may have difficulty meeting its exhaust toxics anti-dumping standard, for which fuel benzene and aromatics are the primary fuel parameters, the refinery units which impact these two fuel parameters are different than those used to reduce sulfur. (Most refineries will need to install new equipment in order to reduce sulfur to the levels required under the Tier 2 standards.) Thus, reducing benzene and/or aromatics does not contribute to the goal of achieving the Tier 2 gasoline sulfur levels early, and, consequently, an alternative compliance period based on the inability to meet the anti-dumping exhaust toxics standard would not be appropriate given the considerations underlying today's proposed rule.

In addition to meeting the Tier 2 gasoline sulfur standards early, the gasoline produced by a refinery over the entire alternative compliance period would have to result in a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refinery produced gasoline that did not comply with the statutory baseline. Additionally, the refiner would have to purchase stationary source NO_X credits sufficient to offset any NO_X deficit generated (on a quarterly basis) and would have to meet the specific requirements of this proposed rule, including additional reporting requirements. By proposing to modify the standards applicable to refineries with an alternative compliance period, we are providing appropriate assurance that no environmental disbenefit occurs as a result of allowing an alternative compliance period.

When regulated entities cut emissions more than is required, the ''extra'' environmental benefit may be considered as a pollution credit, usually measured in tons, that may be sold or banked for future use. Emissions trading associations have been created to facilitate the buying and selling of pollution credits. Marketable NO_X credits are currently generated through NO_X reduction programs in 13 states. In addition, there is a multi-state NO_X emission trading program operating in eight Northeastern states that are members of the Ozone Transport Commission. Further information on NO_X trading programs is available on the Internet at www.epa.gov/acidrain/programs.html.

As described below in ''How the Agency Proposes to Act on a Petition'' and ''The Refiner's Proposed Responsibilities if a Petition is Granted,'' NO_X credits purchased quarterly to offset any NO_X deficit must be held by a refinery that operates under an adjusted compliance period under this proposed rule. These banked credits function as collateral against any NO_X deficiencies that the refiner creates, to minimize the possibility of environmental harm in the event that the refiner does not fulfill its obligation under the other requirements of this proposed rule. If, as planned, the refinery eventually produces gasoline that meets and then exceeds the NO_X baseline, the refiner may sell NO_X credits equal to the benefit produced during that quarter. If the refinery violates the conditions under which its petition is granted, the NO_X credits may be forfeited. The intention of this proposed provision is that environment will suffer no net loss, although any NO_X deficit may occur in a different location than a NO_X credit was generated. Much of the gasoline in the U.S. is produced on the Gulf Coast and other coastal areas and shipped throughout the country, primarily by pipeline. Gasoline is fungible, and is normally transported in pipelines mixed with other batches that meet the same specifications. In general, it is not possible to predict where a particular batch of gasoline included in larger shipment will end up; as a result, it is not generally possible to predict where a NO_X deficit may occur. Similarly, it is not possible to predict where the air quality benefit from the doubled payback of any NO_X deficit will occur.

Who May Petition for an Alternative Anti-Dumping Compliance Period

Under this proposed rule, a refiner may petition EPA for an alternative compliance period for any refinery that is starting up gasoline production for the first time under the anti-dumping requirements, that is subject to the statutory baseline, and that can demonstrate a significant hardship with regard to producing gasoline conforming to the statutory baseline for NO_X in the early years of production. Flexibility with regard to alternative anti-dumping compliance periods will be particularly helpful for challenged refiners (as described in the Tier 2 gasoline sulfur rule), including small refiners; however, any refiner who meets the threshold conditions above would be able to submit a petition. The petition may be for a domestic or foreign refinery. The refiner would have to have specific plans to bring its gasoline into compliance with the statutory baseline early enough through the alternative compliance period in order to achieve the two-fold NO_X payback. Furthermore, the refiner would have to have specific and demonstrable plans to produce gasoline to pay back any NO_X deficit by the end of the requested compliance

[3] Under the Complex Model, the tool used to evaluate anti-dumping performance, olefins is the other fuel parameter which significantly impacts NO_X emissions.

period. For many refiners, these plans would likely include early installation of sulfur-reducing technologies necessary to meet the Tier 2 gasoline standards.

When Would Petitions Have To Be Received By?

A refiner who meets the threshold conditions would be able to petition the Agency for an alternative anti-dumping compliance period. For reasons discussed in the preceding sections, we believe that the window during which this flexibility is appropriate is the period before the Tier 2 gasoline program standards fully apply. Therefore, petitions for alternative anti-dumping compliance periods of four or five years in length would have to be received by no later than June 1, 2001. For an alternative compliance period of two or three years in length, the petition would have to be received no later than June 1, 2003. No alternative anti-dumping compliance period may be designed to start, or requested to start, after January 1, 2004 or to end after December 31, 2005.

What a Petition for an Alternative Anti-Dumping Compliance Period Would Have To Contain

A refiner would be able to petition for an alternative anti-dumping compliance period of two, three, four, or five years in length. The petition would have to contain, at a minimum:

- The business name and address and any location(s) where the refiner conducts operations.
- The name and contact information for the responsible corporate officer and a contact person who can provide further clarification with regard to information in the petition.
- A detailed explanation of why the refinery is eligible to request an alternative anti-dumping compliance period. This explanation would include documentation showing that the refinery is starting up production and has never produced conventional gasoline subject to the anti-dumping regulations and information demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.
- The length of the averaging period requested (2, 3, 4, or 5 years) and a justification for why that length of averaging period is required.
- An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.
- The refinery's estimated gasoline production and average NO_X level for each of the years in which the alternative averaging period is required.
- A detailed description of the current refinery equipment and configuration.
- A detailed description of any changes or enhancements to the refinery equipment and configuration that will occur during the alternative averaging period requested.
- The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).
- A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.
- A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit. An equation for calculating the NO_X deficit and NO_X benefit is included in the regulations.
- A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.
- A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.
- Any other information the Administrator may require in order to fully evaluate the refiner's petition. Such information would include requests for clarification of any item(s) included in the petition that is necessary in order to render a final decision as to whether to grant or reject the petition.

The above items represent, at a minimum, the topics that we believe must be addressed in the petition. The refiner may wish to elaborate on certain topics—*e.g.,* if it faces particular hardship because it is a small business or if its refinery faces other, unique challenges that may influence the Agency's decision on the petition.

If we were to find that any refiner has provided false or inaccurate information in connection with its petition, we propose that the remedy be to notify the refiner and the application of any alternative anti-dumping compliance period would be *void ab initio.*

How the Agency Proposes To Act on a Petition and the Refiner's Proposed Responsibilities if a Petition Is Granted

Notification of Approval and Disapproval of Petition and Proposed Dates By Which the Refinery Would Have To Meet the Statutory NO_X Baseline Standard and Pay Back Double the NO_X Deficit

We propose to notify a refiner of approval or disapproval of its petition by mail after considering a complete petition. If approved, we propose to notify the refiner of the alternative anti-dumping compliance period approved (*i.e.*, two, three, four, or five years) and the interim standards that would have to be met. The interim standards would be as set forth in the regulations and would include two major standards that the refinery would have to meet. The first standard sets forth the date by which the refinery would have to start to comply with the statutory baseline NO_X standard, on average, for all its gasoline. For example, for a two year averaging period, the refiner would have to hit the first interim standard by the seventh quarter. Once the first date is reached, the refiner would have to continue to meet the statutory baseline standard for NO_X, on average, for all gasoline it produces.

The second standard would set forth the date by which the refinery would have to pay back double the NO_X deficit. This date would correspond to the end of the alternative averaging period. For example, for a two year averaging period, the refiner would have to pay back double the NO_X deficit by the end of the second year. Failure to meet one of these standards would result in a violation of the anti-dumping regulations. The anti-dumping standards, including NO_X emissions, are defined in units of milligrams per mile. In order to quantify the NO_X deficit or benefit in tons under today's proposed rule, it is necessary to know the variance from the standard, the volume of gasoline involved and the average fuel economy for the overall national fleet of gasoline powered vehicles. For the purpose of these calculations, we are proposing to use the most current data as presented in the Calendar Year 1999 National Highway Traffic and Safety Administration report to Congress of 24.5 miles per gallon. Thus the constant figure in both equations of 2.7×10^{-8} is the product of the above fuel economy factor and the conversion from milligrams to tons. The average NO_X level and volume of gasoline produced during the quarter are self explanatory. The equations for calculating NO_X

deficit and benefit are proposed to be as follows:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Def}}$ = the NO_X deficit for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NO_X standard of 1461 mg/mile, expressed in tons.

$NO_{X_{ad}}$ = the average volume weighted NO_X emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d = the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Ben}}$ = the NO_X benefit during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

$NO_{X_{ab}}$ = the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile.

G_b = the volume of gasoline produced during the quarter(s) the refiner is below the applicable NO_X standard, measured in gallons.

The calculations would be performed on a quarterly basis. As an example, a 10,000 barrel per day refinery would produce 37.8 million gallons during a given quarter. Assuming the gasoline, on average, met a NO_X standard of 1500 mg/mi, the total NO_X deficit for the quarter would be

$$39.8 \text{ tons} = (1500 - 1461) * 37{,}800{,}000 * 2.7 \times 10^{-8}$$

As an example of how the NO_X deficit would have to be paid back on a two for one basis, assume that the same refinery has a two year alternative averaging period. Assuming that the refinery were to produce the same quality and volume of gasoline for the first five quarters and then began to produce gasoline meeting the statutory baseline (in order to meet the first standard), the total NO_X deficit, in tons, would be 199 tons. In order to meet the second standard, the paying back of double the NO_X deficit, the refiner would have to produce a total NO_X benefit of 199 * 2, or 398 tons of NO_X benefit. Thus, the alternative averaging period is designed to ensure that there is no overall environmental detriment by requiring a certain amount of NO_X overcompliance.

Interim Milestones

A refiner would be able to qualify for an extended averaging period only if, at the time of the petition, it activates a refinery that faces substantial demonstrated hardship in producing gasoline which meets the anti-dumping statutory baseline NO_X standards during the early years of production. EPA believes that this hardship is most likely to be the result of a lack of the necessary refinery processing equipment. Moreover, it would be necessary for such a refiner to obtain this processing equipment in order to begin producing gasoline that would allow the refinery to comply with the proposed overall alternative averaging period NO_X standard. However, if such a refiner were to fail to obtain this processing equipment in a timely manner it is likely the refiner will not be able to offset the NO_X deficit created during the first phase of the extended averaging period by the required compliance deadline.

For this reason EPA believes it is appropriate for a refiner who has been granted an extended averaging period to demonstrate that reasonable progress is being made toward obtaining necessary processing equipment. As a result, under today's proposed rule EPA is requiring refiners to include in extended averaging period petitions the expected dates for key milestones for obtaining necessary processing equipment. These milestones normally would include the dates for signing the contract for equipment design, for obtaining necessary permits, for obtaining financing commitments, and for breaking ground for construction. During the petition review EPA intends to evaluate the milestones proposed by the refiner and establish appropriate milestones that will be incorporated into any petition approval. The refiner would be required to submit reports to EPA demonstrating these milestones are met as a contingency for continued operation under the alternative compliance period.

Upon a refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the Administrator would have the discretion to accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline $NONO_X$ standard, so that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. That is, a failure to meet a milestone may result in a requirement for the refinery to begin producing gasoline that complies with the statutory baseline beginning with the next quarterly averaging period and continuing thereafter. The acceleration of the requirement regarding compliance with the annual average statutory baseline NO_X standard would not affect any of the other standards or requirements applicable to the refinery under this section (*e.g.,* the refinery would still be required to comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard by twice as much as the early NO_X deficit generated by the refinery). Moreover, upon the refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, we are proposing that the refiner would forfeit any NO_X credits that it was required to have banked as of that time. EPA realizes that a refiner in this situation may not be able to produce gasoline that meets the statutory baseline and may be forced to produce products other than gasoline, such as blendstocks, or to close the refinery. However, allowing such a refiner to generate additional NO_X deficits would only result in additional environmental harm.

Additional Requirements

In addition to the proposed requirements described in the preceding paragraph, the following general requirements are proposed to apply to a refinery for which a petition is granted:

- The refinery must meet all applicable statutory baseline standards for an annual average compliance period, except the standard for NO_X. For example, this means that the refinery would have to comply with the toxics standards on an annual basis.

- The refiner must designate all gasoline produced during the period of time that the refinery does not meet the annual average statutory baseline

standards as gasoline with a volatility of 9.0 pounds per square inch (psi).

• A refiner for which a petition is granted must provide a written demonstration that it has purchased and banked NO_X credits equal to the NO_X deficit calculated for the end of the preceding quarter and must retain these banked credits throughout the current quarter. The NO_X credits are necessary in order to guarantee that the refinery does not generate a net NO_X detriment. The amount of NO_X credits required to be banked will be calculated each quarter. When the refinery begins to produce conventional gasoline that, on average, meets the anti-dumping NO_X standard, it may sell NO_X credits off in an amount equal to any NO_X benefit generated in the preceding quarter. We believe that this approach permits more flexibility for the start-up refinery than an approach that would require them to make a significant up-front purchase of credits equal to the entire projected NO_X deficit for the alternative averaging period.

• A refinery for which a petition is granted may not generate any Tier 2 sulfur credits or allotments during the entire alternative anti-dumping compliance period.

• A refinery for which a petition is granted must submit anti-dumping compliance reports more frequently than other conventional gasoline refineries. This enhanced reporting will ensure that the refinery is on target with meeting the interim performance goals. The documents that must be submitted include quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter, and documents that demonstrate the refiner has purchased and banked the necessary amount of NO_X credits to equal the NO_X deficit calculated for that quarter.

Change in Alternative Averaging Period

At any point during the pendency of the alternative conventional gasoline anti-dumping compliance period, we are proposing that the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. For example, if a refinery originally received an alternative compliance period with a duration of 2 years beginning on January 1, 2001, at any time prior to the end of that compliance period (January 1, 2003), the Administrator may approve an application to assign to the refinery the standards and requirements that would have been applicable to the refinery had the refinery originally received one of the other alternative compliance periods. Any refinery for which a change in the applicable alternative compliance period is approved would thereafter operate as if the refinery had originally requested and received such new alternative compliance period, and would be subject to the standards and other requirements applicable under such new alternative compliance period. Consequently, for a refinery with an original alternative compliance period of 2 years beginning on January 1, 2001 (which would end on January 1, 2003), for which the Administrator later approves a change to a 3 year compliance period on January 1, 2002, the termination date for the new alternative compliance period would be January 1, 2004, and the refinery would need to begin producing gasoline that complies with the annual average statutory baseline during the quarter beginning January 2004.

We are proposing that the Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject. No such application may result in an alternative compliance period that extends beyond January 1, 2006. A refinery for which the Administrator approves a change in the alternative compliance period would be subject to all the standards and other requirements of the new alternative compliance period as well as any additional conditions or requirements that are included in the approval of the application for a changed alternative compliance period. Accept as specifically modified by this section, such refinery would have to continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this proposed regulation would result in none of the economic effects set forth in Section 1 of the Order because it would generally relax the requirements of the anti-dumping program and provides regulated parties with more flexibility with respect to compliance with the anti-dumping requirements. Pursuant to the terms of Executive Order 12866, OMB has notified us that it does not consider this a ''significant regulatory action'' within the meaning of the Executive Order and has waived review.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would permit refiners to petition for alternative anti-dumping compliance periods and would not impose any substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this proposed rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or 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 we consult with those governments. If we comply by consulting, Executive Order 13084 requires us 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 our 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 us 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 would not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule would not create a mandate for any tribal governments. This proposed rule would apply to gasoline refiners. Today's proposed action would make some changes that would generally provide flexibility within the Federal anti-dumping requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA 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 would not have a significant economic impact on a substantial number of small entities. 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 that has not more than 1,500 employees (13 CFR 121.201); (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.

After considering the economic impacts of today's proposed rule on small entities, the Administrator has determined that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule would provide regulatory relief by permitting regulated parties, including small entities, to seek an extended anti-dumping compliance period. We have therefore concluded that today's proposed rule would relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

This proposed action establishes a petition process that involves the collection of information. It also requires reports that will utilize existing RFG and anti-dumping reporting forms. Refiners that request alternative compliance periods for anti-dumping are already subject to anti-dumping reporting requirements, which include annual compliance reporting, but although refiners of RFG are required to submit quarterly batch reports and laboratory reports, refiners of conventional gasoline under the anti-dumping program are not generally subject to this quarterly reporting requirement. A refiner granted an alternative compliance period for anti-dumping under this rule would become subject to quarterly batch reporting and laboratory reports. Since this constitutes the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the existing Information Collection Request (ICR) for the RFG and anti-dumping program will be submitted to OMB for approval to the collection of any information. A separate Federal Register notice will be published regarding the ICR. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.07).

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. 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 our regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, we 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 a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective

or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, an agency 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This proposed rule applies to gasoline refiners. Today's proposed action would provide regulated parties with more flexibility with respect to compliance with the anti-dumping requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that we have 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.

We interpret 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, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This proposed rule permits flexibility in establishing extended anti-dumping compliance periods in narrow circumstances where a net environmental benefit is expected.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed action would not establish new technical standards or analytical test methods, and would not affect existing technical standards or analytical test methods.

J. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Anti-dumping, Reformulated gasoline.

Dated: August 30, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–22809 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket OST–97–2550]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: In May 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) regulation. The SNPRM included proposals for revising the airport concessions portion of the DBE program. When the Department, in February 1999, issued the final rule based on the SNPRM, we did not publish a final version of the airport concessions proposal.

This SNPRM seeks comments on an airport concessions subpart to part 26 that takes into account comments on the May 1997 SNPRM, adapts provisions of the rest of part 26 to the concessions context, and proposes options for provisions affecting car rental operations at airports. These options are based in part on a recent memorandum of understanding between the American Car Rental Association and the Airport Minority Advisory Council making recommendations to the Department on this aspect of the rulemaking.

DATES: Comments should be received by October 23, 2000. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–97–2550, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/.* The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/.*

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The airport concessions provision of the DBE regulation implements statutory authority that is separate from the authority for the DBE program for DOT-assisted contracting. It applies to an industry—airport concessions—that

differs in a number of respects from the industries involved in DOT-assisted contracting, whether in airports, transit, or highways.

The types of business opportunities this subpart concerns include concessionaires, management contractors, and firms that supply goods or services to them. None of this work is eligible for FAA grant funds. Concession agreements generally involve high rent payments to the airport, often computed as a percentage of the concessionaire's annual gross receipts or a fixed amount, whichever is greater. Larger concessionaires are often required to make a substantial investment in a leased facility, which may be amortized over a period exceeding five years. In some instances, airports grant a firm the exclusive privilege to provide a particular type of concession, such as food and beverage services, to the entire airport.

Because of these unique features of airport concessions, this subpart differs in a number of respects from the provisions of the DOT-assisted contracting portions of the DBE rule. For example, the counting provisions of the rule, particularly with respect to car rental operations, differ significantly from those in the remainder of our DBE rules. Many provisions are parallel, however. Except with respect to size and personal net worth standards, which differ because of the economic characteristics of concessions, this subpart uses the certification standards of the rest of part 26. The basic narrow tailoring principles of part 26, including those pertaining to goal setting, apply here as well.

We sought comment on this subpart in our May 1997 DBE supplemental notice of proposed rulemaking (SNPRM). Because three years have elapsed since the 1997 notice and because this version of the document is different from the 1997 version in a number of respects, we have decided to seek additional comment. This new SNPRM reflects many of the comments we received on the May 1997 notice. When we refer to comments in discussing the provisions of the SNPRM, we are referring to comments on the May 1997 notice.

Section-by-Section Discussion

FAA Guidance

One comment asked whether the final rule modifies FAA guidance interpreting 49 CFR part 23. As under the rest of part 26 (see § 26.15), the new rule would completely replace the old rule. Guidance issued under the concessions portion of old part 23 would no longer be in effect, once this subpart takes effect, because it interprets and implements a rule that has been removed from the Code of Federal Regulations. The provisions of the final version of this SNPRM would now govern and will be incorporated into any new technical assistance that FAA or DOT may issue. One piece of guidance we anticipate issuing at the time of, or shortly after, the publication of the final rule is a ''sample plan'' to assist airports in drafting their concessions program. We would put this sample plan on our web site, as we did for the sample plan we issued for the Federally-assisted contracts portion of part 26.

Section 26.111 Do the Provisions of Subparts A–F of this Part Apply to This Subpart?

This provision says that the rest of part 26 applies to the airport concessions program, except where this subpart provides differently.

Section 26.113 What Do the Terms Used in This Subpart Mean?

The concession provisions in 49 CFR part 23 incorporated the definition of ''affiliation'' from regulations of the Small Business Administration (SBA) 13 CFR part 121. Under part 121, affiliation may arise through joint venture arrangements, requiring the parties to combine their gross receipts in making a determination of business size. The SNPRM proposed to delete this provision from affiliation rules employed in the concession program. Two comments concurred with the proposal, and this SNPRM would adopt it. This SNPRM also reflects an amendment made to SBA's definition, which was published in the January 31, 1996 **Federal Register** (61 FR 3280).

This SNPRM would add a new definition of ''car dealership,'' which is intended to clarify the SNPRM's provisions concerning purchase of vehicles by car rental operations and others.

Five comments addressed the proposed exclusion from the definition of ''concession'' of firms that only pick up and/or discharge customers at the airport, and that have no on-airport facility. Three supported the change, while two requested clarification. This SNPRM clarifies that a car rental is considered ''at the airport'' if it has an on-airport facility, including a counter at which its services are sold to the public, or a ready return facility. The types of facilities cited in the SNPRM are intended as examples, and a firm need not have a particular one to qualify as a concessionaire.

In addition, in response to comments and because the Department has received numerous questions on the issue, we are proposing to make contracts for on-airport advertising part of the definition of ''concession.'' Placing advertising signs and other media in public portions of an airport (*e.g.,* the terminal, the roadways leading to the terminal) is analogous to other businesses that we view as concessions. A firm typically pays to lease space from the airport and places objects in airport buildings and grounds that are directed at the traveling public. This can be a significant business opportunity for small businesses, including DBEs. However, the advertising agency usually does not have an office or store on the airport from which it sells goods or services to the traveling public. As a result, there has been uncertainty about whether advertising meets the current definition of ''concession.'' To resolve this uncertainty, and because we believe that, as a matter of policy, it makes sense to make this type of business opportunity more readily available to DBEs, we are proposing to add this kind of advertising to the program. We seek comment on this proposal.

Under this SNPRM, all entities meeting the definition of ''concession'' are included in the base from which overall DBE goals are calculated, regardless of when the contract was awarded. At the same time, the proposed rule makes clear that sponsors are not required to modify or abrogate an existing concession agreement (one executed prior to the effective date of the final rule) during its term. The same procedure was used when subpart F of 49 CFR part 23, was published in 1992.

One issue of which we have become aware concerns businesses that may occupy a portion of airport property, serve the public in general, but do not focus on serving passengers who use airport for air transportation. For example, an airport may lease space on its property, perhaps some miles from the terminal, for a supermarket or other retail establishment that serves the local population but is not, except perhaps incidentally, used by persons who go to the terminal to catch a flight. We seek comment on whether we should exclude such businesses from the definition of concession. We might do so, for example, by changing this definition to refer to businesses that ''primarily serve the traveling public on the airport.''

In response to a comment, the term ''concessionaire'' has been modified to include firms that own and control a portion of a concession, in addition to those that own 100 percent of one. This

is in accord with our policy established at the inception of the program that concessionaires include sublessees and joint venture partners.

The term ''direct ownership arrangement'' has been modified to include a reference to licensees. We concur with a comment stating that while some corporations use licenses, others use franchises to establish non-company owned locations at airports. Since the two arrangements are not interchangeable as a matter of law, both are named. This SNPRM adopts the term ''management contract or subcontract'' with minor changes to clarify the coverage of subcontractors.

This SNPRM retains the 1997 SNPRM's proposal that a ''small business concern'' must be an ''existing'' business. Of three comments on the matter, one concurred, a second opposed it, while a third requested clarification. The one opposed believes that the provision will unreasonably limit a sponsor's flexibility. It stated that it is relatively common for existing firms to form new, separate corporations or other legal entities for each of its airport concessions. The comment said that such firms have either formed the new legal entity or have applied for certification for the existing entity with the proviso that the new entity would be formed if awarded the contract.

The Department believes that only existing firms should be permitted to apply for certification as a DBE. Approval of an application based on an assurance that an entity will subsequently form a firm would pose legal difficulties and undermine the integrity of the certification process.

For example, an entity might refuse to form the legal structure that it represented in its application, leaving the sponsor with no recourse but to impose contract sanctions.

An existing firm need not be operational or demonstrate that it previously performed contracts at the time of its application for certification. However, it would be required to specify its legal form and meet applicable eligibility standards. We have retained the provision that a firm cannot be denied certification solely because it was newly formed. For a sole proprietorship, which consists of a single individual, the applicant must, like other firms, submit appropriate information sufficient for the sponsor to make an eligibility determination.

The 1997 SNPRM invited comments on whether the concession program should employ a personal net worth (PNW) standard. Under such a provision, if an individual presumed to be socially and economically disadvantaged has a PNW above the standard, the presumption of economic disadvantage would be rebutted. Six commenters favored using a PNW standard in the concession program, while one commenter (a firm) generally opposed the use of any standard, for many of the same reasons that commenters opposed adopting the standard in the rest of part 26 (*e.g.,* a PNW standard ''penalizes success,'' the information collection requirements are too intrusive).

Two sponsors recommended a threshold of $750,000 in order to be consistent with the figure proposed by DOT in the 1992 NPRM, and subsequently adopted in part 26, for the contracting program. Any higher level, said one, would raise an issue of fairness and credibility with the public. Others recommended $1.5 million and $2 million for the threshold, while another favored tying it to the relative difference in size standards in the contracting and concession programs. Another sponsor commented that it does not consider itself qualified to determine an appropriate level and asked the Department to provide a rationale for any that is selected. It suggested that an individual's ability or inability to obtain a letter of credit or a bond of a certain value would be a better indicator. It also commented that not all wealth (*e.g.,* undeveloped land) appearing on a personal net worth statement has economic value for the owner.

The Department discussed in some detail why it adopted a PNW standard in the rest of part 26, and this discussion applies in the concessions context as well. While we are well aware that this approach has disadvantages (*e.g.,* some firms may be unable to participate in the program as a result), we believe that a PNW standard can be a useful safeguard against including in the program firms owned by individuals who it is difficult to view as economically disadvantaged. We believe that the concept of program eligibility based on economic disadvantage appears to call for a threshold for determining when an owner is no longer disadvantaged. The DBE concession program is not intended to assist enterprises owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth. Also, in a narrowly tailored program that is subject to judicial review, we believe that using a PNW standard to ensure that the program is not overinclusive can be very important in defending the program in litigation.

Because of differences between the concessions program and the DOT-assisted contracting program, however (*e.g.,* the higher cash flow of concessions, the need to raise significant capital to compete at multiple airports), DOT has decided to adopt a different personal net PNW standard for the concessions program. We believe that $2 million will be a standard that will achieve the objectives of a PNW standard while not interfering unduly with the ability of firms to succeed in the concessions business. We believe that the $2 million limitation is high enough to enable an owner to expand to several airports, yet is sufficiently low to prevent the individual from amassing unlimited assets. The figure also considers the substantial capital investment and higher operating costs generally associated with a concession, compared to DOT-assisted contracts. The figure would be subject to the same exclusions as the PNW standard in the contracting program (see § 26.67, ''What rules determine social and economic disadvantage?'')

Section 26.115 To Whom Does This Subpart Apply?

Since we received no substantive comments opposed to this section, it has been included without change.

Section 26.117 What Are the Nondiscrimination and Assurance Requirements of This Subpart for Sponsors?

These requirements were not the subject of substantive comments to the previous SNPRM, and have been included without change.

Section 26.119 What Information Do Sponsors Have to Retain and Report About the DBE Concession Program?

This provision is essentially parallel to § 26.11 and was included for the same reasons as discussed in the preamble to that section. The bidders' list requirement of that section is not repeated here, but does apply to firms seeking concession opportunities.

Section 26.121 Who Must Implement a DBE Concessions Plan?

One comment concurred with this May 1997 version of this section, while another urged the Department to require small primary airports to submit DBE concession plans every two years, rather than annually. This SNPRM would retain the provision that requires only primary airport sponsors to implement a DBE concession plan. Sponsors of general aviation airports, reliever airports, and nonprimary commercial

service airports are not subject to this requirement. Rather, they must take appropriate outreach steps to encourage available DBEs to participate as concessionaires whenever there is a concession opportunity. This provision significantly reduces burdens on them.

As a clarification, the language of this version of the proposed regulatory text gives sponsors who own more than one airport the option to submit a concessions plan covering all of the airports. There would be separate goals for each, however. Under the SNPRM, submitting a plan would be a one-time exercise, with additional submissions needed only in the case of significant changes to a plan that FAA had approved.

The FAA intends to issue, in conjunction with the publication of the final rule, guidance for the drafting of concessions plans. This will take the form of a sample concessions plan analogous to the sample DBE program currently on the Department's web site for the financial assistance portion of the DBE program.

Section 26.123 What is the basic DBE goal requirement for sponsors?

Section 26.125 What is the base for a sponsor's goal for concessions and covered activities other than car rentals?

Section 26.129 How are a sponsor's goals expressed and calculated?

Section 26.131 What are public participation requirements concerning a sponsor's goals?

Section 26.133 What are the contents of a sponsor's goal submissions to FAA?

Section 26.135 What does FAA do with your goal submission?

Section 26.137 What are the sponsor's obligations concerning the use of race-neutral and race-conscious measures?

Section 26.139 What are the steps a sponsor takes to meet its DBE goals?

This proposed set of requirements for goal-setting differs from that of the May 1997 SNPRM in some respects. Most importantly, this SNPRM proposes the requirement that sponsors must have two overall goals: One for concessions and covered activities other than car rentals, and the second for car rentals. Car rental goals are discussed separately below. Consistent with statutory requirements, management contracts and purchases by concessions from DBE suppliers form part of the goal.

Sponsors' goal submissions would cover a period of three to five years, in order to reduce the administrative burdens associated with the goal calculation and review process. The submissions would include goals for each year in the period, however. If circumstances changed significantly during this period, recipients would have to make a mid-course adjustment.

We propose that sponsors would calculate their goals by using methods parallel to those used in Federally-assisted contracting under the rest of part 26. This approach to goal-setting is by now familiar to airports, since they have already used it in their Federally-assisted contracting DBE programs. We seek comment on whether there should be any adjustments made to these requirements in view of the differences between contracting and concessions.

In the May 1997 SNPRM and the current rule, the Department proposed that sponsors could base goals on the number of concessions, rather than the dollar volume of concessions. While this approach appears permitted by the language of the concessions statute, it has been used infrequently. It may be less suited to measuring the ''level playing field'' that we seek to describe in the goal setting process. For this reason, we propose that a sponsor would have to use the program waiver process of § 26.15 to employ this approach. To ensure legal sufficiency of such a waiver request, the FAA Chief Counsel's office would concur in any waiver request before it was sent to the Administrator for action.

The only situation we foresee in which this approach would be necessary is one in which the airport does not know the gross receipts of all or a significant portion of its concessionaires. One alternative would be to require concessionaires to make this information available to airports, though we recognize that the businesses might prefer to keep this information confidential. We seek comment on the best way of resolving this issue.

The proposed rule notes that a firm's overall receipts from non-concession activities do not form part of the base for goals. For example, airline and other aeronautical activities are not considered concessions. Therefore, the portion of a food service business's receipts from catering to airlines would not be part of the base for goals.

Comments were mixed on the 1997 SNPRM's proposals to require sponsors to provide for public participation in setting overall goals. Some felt the process would be burdensome and of little value. Since sponsors are generally public agencies, information on their concession plans is readily available to the public, commenters said. While this true, sponsors do not uniformly invite input from interested persons or groups when establishing overall goals. We believe that the process will assist in setting the goals at levels that are reasonable and consistent with the factors upon which goals are based. The objective of the process is to involve as many stakeholders as possible and to do so prior to setting the goals.

Therefore, this SNRM retains the public participation provision with some modifications. It adds to the organizations that sponsors must consult. They now include, in addition to minority, women's, and concessionaire groups (changed from ''general contractor'' groups), trade associations representing concessionaires currently located at the airport as well as existing concessionaires themselves. The SNPRM would not pre-empt state or local freedom of information or sunshine act procedures.

A sponsor is required to provide for public participation at the beginning of each 3–5 year goal submission process. The requirement to ''consult'' with organizations as referenced in the rule means that sponsors should conduct informal outreach and actively solicit their views. A public hearing is not required.

Comments said that the public participation process is intended to benefit the sponsor, which is responsible for adopting and submitting acceptable goals. Further, the process does not confer any third party rights or private rights of action. While we concur with these statements, we have not adopted a recommendation to include disclaimers to this effect. Since the notice to be published advises that comments are for informational purposes only, we believe that it adequately expresses the intent and limitations of the public participation process.

In connection with the public participation process, several comments recommended that overall goals for concessions be set on the same cycle as goals for DOT-assisted contracting, so that a single notice can be published concerning both. The Department has no objection to this approach. We will require goals (except for the first time) to be submitted on August 1, as is the case for Federally-assisted contracting goals, though of course concessions goals would not have to be submitted every year.

The public participation process is not intended to substitute for the requirement that sponsors and concessionaires make good faith efforts in notifying and soliciting the interest of DBEs in specific concession offerings. We concur with a comment that public prebid or preproposal conferences provide an excellent forum in which to

discuss all aspects of a contract offering, including DBE contract goals. However, such goals should initially be submitted as part of the sponsor's concession plan. The intent of the rule is that overall goals and contract goals are to be reviewed and approved by FAA prior to contract solicitation.

As under the rest of part 26, this subpart prohibits group-specific goals. Goals must cover DBEs as a whole. However, as under the rest of part 26, recipients may seek a program waiver if they believe group-specific goals are necessary (see § 26.15).

In a narrowly tailored affirmative action program, sponsors need to consider two types of measures for meeting their goals: Race-neutral and race-conscious measures. This SNPRM lists several examples of each. The SNPRM notes that these efforts should be spread among various types of business opportunities, and not concentrated in one place. As under the rest of part 26, sponsors must estimate the portion of their goals they project meeting through race-conscious and race-neutral means. Sponsors would make this estimate in the same way they make the parallel estimate under the rest of part 26. Maintaining data on race-conscious and race-neutral participation would also be required. As generally under part 26, sponsors would not be penalized simply for failing to meet their overall goal, as long as they operate their program in good faith.

Section 26.141 How do concessionaires and covered activities other than car rentals meet concession-specific DBE goals?

Section 26.145 How do sponsors count DBE participation toward goals for items other than car rentals?

The most common race-conscious measure sponsors are likely to use to obtain DBE participation is the concession-specific goal, analogous to the contract goal in the DOT-assisted contracting portion of part 26. As with contract goals, a concessionaire must either meet a concession-specific goal or demonstrate good faith efforts to the sponsor. For the most part, counting DBE participation toward concession-specific goals follows the same rules as counting DBE participation under the rest of part 26.

There are some differences, however. The SNPRM would specify that costs in building concession facilities could count toward concession goals. One comment on the 1997 SNPRM concurred with the proposal to not require a DBE who performs a concession or management contract to perform at least 30 percent of the work with its own forces in order to be considered to perform a commercially useful function. Another comment disagreed, saying that 30 percent represents a reasonable minimum amount in a joint venture and anything less reduces the DBE's role to a passive one.

The Department believes that the 30 percent rule may impose an unrealistically high standard for concessions and management contracts. DBE participation in these arrangements often is less, yet DBEs participate meaningfully. Moreover, a DBE partner in a joint venture must have a clearly defined role in order to qualify as eligible for participation. Accordingly, the SNPRM would not apply the 30 percent requirement to either concessions or management contracts. Nevertheless, recipients would be responsible for ensuring that DBEs perform a commercially useful function in order for their participation to count toward DBE goals.

This section also proposes counting 100 percent of the amount of cost of materials and supplies obtained from DBE regular dealers. This differs from the contracts portion of part 26. The reason for the difference is that the 100 percent rule here appears more consistent with the concessions statute and its legislative history. We seek comment on this issue and on whether there should be additional concession-specific counting provisions.

Section 26.127 What is the base for a sponsor's goal for car rentals?

Section 26.143 How do car rental companies meet concession-specific DBE goals?

Section 26.147 How do sponsors count DBE participation toward car rental goals?

Car rentals have long been the most difficult and contentious subject in the concessions rulemaking. Recently, the American Car Rental Association (ACRA), which represents many car rental companies, and the Airport Minority Advisory Committee (AMAC), which represents many DBE firms that work at airports, agreed on a memorandum of understanding concerning the treatment of car rental operations under this rule. The MOU makes a number of recommendations to the Department on this issue. For commenters' information, we are reproducing the text of this agreement below (signature lines and some duplicative heading material have been omitted):

Memorandum of Understanding Between the Airport Minority Advisory Council and the American Car Rental Association Members Including Alamo Rent-A-Car, Inc.; Budget Rent A Car Corp.; Dollar Rent A Car Systems Inc.; Enterprise Rent-A-Car Company; and, National Car Rental System, Inc.; The Hertz Corporation, and, Avis Rent A Car System, Inc. on Issues Relating to the Department of Transportation's Pending Regulations on Disadvantaged Business Enterprise Participation in Airport Concessions, March 13, 1999

I. The Parties to the Memorandum of Understanding

• This Memorandum of Understanding (''MOU'') is between the Airport Minority Advisory Council (''AMAC''), Alamo Rent-a-Car, Inc., Budget Rent A Car Corp., Dollar Rent A Car Systems, Inc., Enterprise Rent-a-Car Company, and National Car Rental System, Inc., each a member company of the American Car Rental Association (''ACRA''), the Hertz Corporation (''Hertz''), and Avis Rent A Car System, Inc. (''Avis''). The member companies of ACRA, Hertz and Avis are hereinafter collectively referred to as ''the car rental companies''. AMAC and the car rental companies are hereinafter collectively referred to as ''the Parties'' and individually as a ''Party''.

• This MOU expresses the consensus of the Parties regarding the subject matter hereof, and sets forth each Party's intent with regard to the issues discussed. This MOU is not intended as a contract; however, the Parties intend to act in accordance with the understandings contained herein.

II. Basis for Memorandum of Understanding

Whereas:

• The Parties are keenly interested in assuring the continued viability of the federal disadvantaged business enterprise (''DBE'') airport concessions program;

• The Parties strongly believe that it is in their mutual interest and the interest of DBEs that the U.S. Department of Transportation (''DOT'') promulgate a final rule governing DBE participation in airport concessions as soon as possible;

• The Parties desire to assist DOT develop a final DBE airport concessions rule that is both practical and effective in terms of public policy and business practices; and

• The Parties have engaged in a process of constructive dialogue concerning certain critical issues regarding the objectives and content of a final DBE airport concessions program rule and the implementation of the rule.

AMAC and the car rental companies do hereby agree to advance and advocate, both together and separately, in public and in private, the principles embodied in this MOU and to work to assure their inclusion in a final DOT rule governing DBE participation in airport concessions. Further, the Parties also agree to explore appropriate ways in which they can work together to enhance DBE business opportunities with and within the rental car industry.

III. DBE Dealer Size Standard

• AMAC and the car rental companies collectively recognize that the existing Small

Business Administration (''SBA'') size standard for new car dealers should not be applied to the DBE airport concessions program because of the large volume of vehicles purchased by car rental companies through their fleet programs; and,

• AMAC and the car rental companies collectively urge DOT to adopt a new car dealer size standard of 500 or fewer employees as the criteria for determining whether a new car dealer meets the definition of a small business under the DBE airport concessions program.

IV. Unified Certification Program

• The Parties are aware that DOT has promulgated a new Unified Certification Program to promote more simplicity and uniformity in the DBE certification process for all DOT-assisted contracts, while at the same time maintaining the integrity of the process. Toward this latter goal, this new requirement includes appropriate review mechanisms for airports and due process safeguards for DBE firms. The Parties urge DOT to apply the Unified Certification Program requirements to the airport concessions program.

V. Federal and Airport DBE Participation Goals and Compliance by Car Rental Companies

• The Parties agree that 10 percent of the gross revenues generated by car rental concessions operating at federally-assisted airports is an appropriate nationwide aspirational goal for the DOT airport concessions program.

• The Parties believe that compliance by a car rental company with federal and individual airport DBE participation goals may be achieved either through direct ownership arrangements, through vendor services and purchases, or through a combination thereof. Further, the Parties agree that under federal law applicable to the DBE airport concessions program, with respect to car rental concessions DBE vendor purchases and/or direct ownership arrangements are equally valid and, accordingly, no preferences or quotas are permitted. The Parties urge DOT to include a clear statement of the law concerning this matter. Specifically, the final rule promulgated for DBE participation in airport car rental concessions should clearly state that ''good faith'' compliance efforts by a car rental company do not require the company to pursue direct ownership arrangements before pursuing vendor purchases.

VI. ''Good Faith'' Efforts and Compliance with DBE Goals

• The Parties believe that a ''good faith efforts'' standard substantially similar to the standard applicable to DBE participation in DOT-assisted contracts should be included in the final DOT airport concessions program rule.

• The Parties believe that the actions listed below are primary examples of bona fide good faith efforts with respect to DBE participation in airport concessions and that they should be acknowledged as such when undertaken by the car rental industry:

• Conduct a comprehensive survey of vendors to determine which qualify as DBE's for purposes of the airport concessions program and encourage other vendors who may be eligible to apply for certification.

• Identify opportunities for DBE's to provide goods and services, and engage in proactive outreach efforts to inform such firms of the opportunities.

• Join and support local and national minority, women, and small business organizations.

• Advertise in local and national DBE-focused publications for vendors that can provide needed goods and services.

• Make DBEs aware of solicitations in a timely manner and meet with firms to determine whether they fulfill requirements as car rental operators, or suppliers of goods and services.

• Document outreach efforts, including those that are unsuccessful.

• Whenever a new opportunity arises, use a combination of sources and outreach efforts (such as those cited above) to identify DBEs that fulfill the need.

VII. Ownership Arrangements

• The Parties encourage DOT to acknowledge that in the first instance a decision to enter into a direct ownership arrangement with a DBE firm is a discretionary matter for the car rental company. Thereafter, once a decision has been made the option to enter into a joint venture, franchise agreement, or other ownership transaction with a DBE firm for purposes of compliance with an airport's DBE goal (to operate a rental car concession or otherwise) is a business decision to be made exclusively by the car rental company and its potential DBE co-venturer, franchisee, or partner.

VIII. DBE Participation Goals and Car Rental Company Vehicle Purchases

• The Parties believe that it is essential for the final DOT airport concessions program rule to acknowledge and take into account the significance and the cost of new vehicles acquired by car rental companies (given that new vehicles constitute the bulk of a car rental company's vendor purchases).

• The Parties agree that the functions performed by dealers in transferring ownership of new vehicles are necessary and constitute a commercially useful function. Subject to the aggregate credit percentage limitation outlined below, when those functions are performed by a certified DBE vehicle dealer the Parties agree that a car rental company should be given full credit for the contract price of the vehicle toward the company's DBE compliance goal. However, the Parties further agree it is critical to encourage DBE participation in a wide array of business opportunities. Thus, the Parties recommend that not more than seventy (70) percent of a car rental company's DBE goal at an airport can be satisfied by new vehicle acquisitions. Nevertheless when an airport has established an approved DBE participation goal greater than 10 percent, the Parties recommend that the portion of the goal beyond 10 percent may be satisfied through additional vehicle acquisitions.

IX. National and Regional DBE Vendor Contracts; Geographic Preferences

• The Parties believe that the final DBE airport concessions program rule should take into account the use by car rental companies of national and regional vendor contracts for the acquisition of certain products and services utilized at multiple airport car rental concession locations. Given that such a contract may represent a potential growth opportunity, the Parties recommend that an airport serviced under such a contract with a certified DBE firm allocate and credit a pro rata share of the contract revenues toward the car rental company's DBE compliance goal. The allocations would be based on information provided by the car rental company, which would bear the responsibility for its accuracy, and would be subject to audit by DOT.

• The Parties recommend that, for federal DBE goal compliance purposes, DOT specify the nation as a whole as the market area from which a car rental company can seek DBE's to participate in an airport's concessions program.

X. Duration and Effect of MOU

• The Parties agree that policy recommendations contained in this MOU do not have the effect of law or supercede the DOT airport concessions program rules and regulations. Nor do the policy recommendations constitute an admission against interest with respect to the contents hereof or to the provisions of federal law authorizing the airport DBE concessions program.

• The Parties acknowledge that the car rental companies are subject to the provisions of the existing DOT airport concessions program rules until such time as new regulations are promulgated.

• The Parties agree that upon promulgation of a final airport DBE concessions rule that this MOU shall be of no further force or effect.

The undersigned officers of AMAC and the car rental companies agree that their organizations, their members, and their representatives will support all of the terms of this Memorandum of Understanding in both public and private. To the extent necessary, AMAC and the car rental companies agree to meet with DOT representatives to urge the adoption of a final DOT DBE airport concessions rule consistent with the terms of this Memorandum of Understanding.

Addendum to the Memorandum of Understanding

This Addendum to the Memorandum of Understanding dated March 13, 1999, (''Memorandum'') by and between Alamo Rent-a-Car, Inc.; Budget Rent A Car Corp.; Dollar Rent A Car Systems, Inc.; Enterprise Rent-A-Car Co.; National Car Rental System, Inc., each a member company of the American Car Rental Association (''ACRA''), The Hertz Corporation (''Hertz'') and Avis Rent A Car System, Inc. (''Avis''), (ACRA , Hertz and Avis are collectively referred to herein as the ''Companies'') and the Airport Minority Advisory Council (''AMAC'') is by and between the Companies, AMAC, and Thrifty Rent-A-Car Systems, Inc. (''Thrifty'').

Whereas, Thrifty is a member of ACRA;

Whereas, Thrifty is by strategy and design a franchise system with more than 90% of its retail outlets worldwide owned by independent businesses who are licensed to use the Thrifty trade names, systems and technologies; and

Whereas, Thrifty has adopted a program especially designed to increase diversity in our franchise owner base.

Thrifty supports and agrees with all of the principles expressed in the Memorandum except for the statement in Paragraph 2, Article V regarding preferences and ''co-equal'' methods of car rental company compliance with Federal and airport DBE participation goals.

The Department appreciates the efforts of AMAC and ACRA, and notes that their MOU provides useful information for the development of the Department's proposals in this SNPRM. Because the approach the MOU takes toward counting car rental DBE participation differs significantly from the counting approach taken by the rest of part 26, and because the dollar volumes of the car rental business at many airports is very high, we believe that it is best to incorporate the MOU's concepts in a separate portion of the DBE rule. Airports would have car rental goals that are separate from their other DBE goals, and the counting mechanism in this portion of the rule would apply only to car rental goals. The purpose of this separate treatment is to ensure that the car rental portion of an airport's concession operations does not so dominate the DBE concessions program that other types of concessions (*e.g.,* retail stores in the terminal) are overlooked. The method for calculating car rental goals would essentially be the same as described above for other types of concessions. Both are modeled on the narrowly-tailored methods for goal setting in the DOT-assisted contracting portion of part 26.

The Department seeks comment on an additional option for calculating car rental goals. This option envisions that car rental companies themselves would voluntarily establish nationwide goals for DBE participation. Following FAA approval, the companies would certify their compliance with this requirement to airports. The individual airports would not have the task of calculating their own car rental goals, and the companies would not have to work with multiple airports on car rental goals. This approach would therefore reduce administrative burdens on everyone concerned. It also responds to the desire of the parties to the MOU for a national approach to car rental goals. The companies would use a goal calculation approach like that described above for airports.

We are aware that some airports may be concerned that this national approach might diminish their ability to respond to local conditions and constituencies. We seek comment on this point, and on how this concern is best balanced with this option's greater administrative efficiency. This option would also include a provision directing car rental companies to spread their DBE participation equitably throughout their systems, lest a company meet all its obligations in a few parts of the country to the exclusion of others.

We do not believe this option is mutually exclusive with the proposal to authorize airports to set car rental goals. For example, the final rule might say that, when a car rental company had an FAA-approved national goal, local airports would accept their certification. Where a company did not have a national goal, or where there was a local company, the airport would set its own car rental goal. The Department seeks comments on these approaches and how they might work together. In both approaches, the companies would make good faith efforts to meet goals in a way parallel to that described above for airports.

The proposed car rental provisions incorporate the list of good faith efforts mentioned in the MOU. They also restate the statutory provision that says that car rental companies are not required to change their corporate structure to comply with this regulation. This ''change to corporate structure'' language was the source of some comment on the May 1997 SNPRM. Three organizations commented on the meaning of the phrase. One firm stated that it consists of corporately-owned and managed operations at large or medium size airports except for certain pre-existing license agreements. When an opportunity arises, it acquires licenses at large or medium size airports. It comments that its firm is very much a system of airport operations owned and operated by a corporate entity. It believes that any rule that would compel it to abandon this structure would violate the statute. Further, the firm stated that any rule compelling it to make any detailed justification for its existing corporate structure would be unnecessary.

Another comment expressed concern that DOT may be seeking to adopt a very narrow definition so that in some circumstances sponsors may argue that a specific concession bid requirement does not require a change in corporate structure. This commenter believes that such ambiguity can only give rise to future disagreements or conflicts between the car rental industry and sponsors. A summary of other points made by this comment follows.

Any attempt to force car rentals into direct ownership arrangements, either as a condition of bidding on a concession contract or as a determining factor in location of a concessionaire's facilities at an airport, directly violates both the language of the statute and intent of Congress. Each time a car rental sells a license or franchise to operate a car rental establishment at an airport, a change in corporate structure of the lessor or franchisor is required. Direct ownership possibilities do not arise frequently at airports across the country for most companies in the car rental industry. For larger nationwide car rentals, most of their airport locations are company owned and operated. For these larger firms, franchisees or licensees that do exist almost uniformly have perpetual franchises or licenses to operate at an airport or in a region. Thus, DOT and sponsors should not assume that just because a new concession contract is being bid at an airport, each car rental has an opportunity to engage in a direct ownership arrangement without changing its corporate structure.

Car rentals may have franchises and licensees extensively during the early years of a firm's existence as they attempt to spread across the country. As these companies mature and reach all their desired markets, the parent company starts to buy back whatever franchises or licenses become available. Car rentals follow this basic strategy because, under federal law, they are prohibited from dictating pricing policies to franchisees and licensees. In order to build a truly nationwide car rental company, most corporations desire to control the quality of service, pricing, quality of vehicles rented, and as many other aspects of the rental transaction and the interaction with customers as possible. As a result, as franchises and licenses become available, car rentals tend to buy them back.

The Department concurs that a decision to operate a car rental through a franchise or license, rather than directly by the corporation, changes a firm's corporate structure. The selling of a franchise or license is not explicitly referenced in the legislative history pertaining to change in corporate structure. Nevertheless, we believe that such a sale does constitute a ''transfer of assets,'' which is cited in the Congressional statement as an indicator of a change in corporate structure.

We believe that a change in corporate structure includes a decision by a firm to sell a franchise or license to operate at a particular airport facility. If a corporation notifies a sponsor that it will sell a franchise or license to operate at the airport, the sponsor would be authorized to require the firm to make good faith efforts to meet a DBE goal. Good faith efforts would include

notifying DBE firms of this opportunity and taking other appropriate steps.

A third commenter believes that the provision would perpetuate a system in which DBEs are not provided opportunities to participate in direct ownership arrangements in the car rental industry. It comments that the broad definition of ''change to corporate structure'' proposed in the May 1997 SNPRM would eliminate any requirements for car rentals to make good faith efforts to involve DBEs in such arrangements. It recommends that DOT consider requiring car rentals to demonstrate positive efforts in this area, just as other concessionaires and DOT-assisted contractors must do. The Department believes that the current SNPRM, in its language concerning direct ownership arrangements, correctly interprets the constraints imposed by statute in levying requirements on car rentals and responds to the points made in the MOU.

The SNPRM proposes a counting mechanism patterned after that of the MOU. One difference between the MOU and the SNPRM pertains to the percentage of a goal that may be met through vehicle purchases. The MOU provides that a car rental operation could meet up to 70 percent of its goal through vehicle acquisitions, with the rest presumably coming through vendor purchases and other means. The SNPRM incorporates this recommendation. However, the MOU also suggests that when an airport has established an approved DBE participation goal greater than 10 percent, the portion of the goal beyond 10 percent could be satisfied through additional vehicle acquisitions. The SNPRM does not include this latter provision. In our view, it places too much weight on the statutory aspirational 10 percent goal as an actual operational portion of the program. It also would have the effect of capping the proportion of DBE participation in car rentals from sources other than vehicle acquisitions to what may be less than one might expect in a ''level playing field'' situation. We do not think this is advisable as a matter of law or policy. However, we seek further comment on this issue.

The SNPRM makes it clear that car rental companies are not required to meet their goals through direct ownership arrangements. However, any participation they choose to obtain through such arrangements may be counted toward their goals.

Section 26.149 What Certification Procedures and Standards Do Recipients Use To Certify DBE Concessionaires?

The SNPRM proposes that, with the exceptions listed in this section, certification for the concessions program be treated the same as certification for other purposes under part 26. The exceptions concern such subjects as size, personal net worth, and affiliation.

The SNPRM does not propose to adopt certain additional changes that commenters on the May 1997 SNPRM requested. One comment requested that sponsors be allowed to report to FAA, but not count toward their goals, a DBE who is a limited partner in a limited partnership. The comment said that in a concession such as a duty-free shop, the functions of a limited partner, although not as substantial as a general partner or a joint venture partner, are nevertheless meaningful. This sponsor commented that DBEs were reluctant to enter into joint ventures with non-DBEs for duty-free concessions because even if the DBE's interest is relatively small, it would be potentially responsible for liabilities and obligations of the entire joint venture or partnership.

The limited partner in a limited partnership cannot, by statute, exercise control over the operations of the business. In view of this, we take the position that a limited partnership is not eligible for certification if the general partner is a non-DBE or a non-disadvantaged individual. The DBE participation that sponsors report to FAA annually includes accomplishments in meeting the overall goal. Only those firms certified as DBEs in accordance with this part can be counted toward meeting the goals. The definition of ''joint venture'' in § 26.5 has been modified to specify that the capital contribution by the DBE joint venture partner must be commensurate with its ownership interest.

One commenter recommended that the rule provide guidelines on the eligibility of Limited Liability Corporations (LLC), saying that this arrangement is commonly used in concessions throughout the country. The comment also said:

* * * one of its basic characteristics is that management of the company may be rotated among its members (same as shareholders in a corporation). Thus, it is important that sponsors obtain written assurances that no management responsibility changes will be made within the firm without prior notification to (the) sponsor. The rest of the business structure parallels a corporation, and should be reviewed as such.

The Department's research indicates that LLCs vary in structure from one state to another. In the absence of a uniform national statute or standards, we have decided not to specifically address LLCs in the rule. However, like every other applicant for certification, a business that proposes to operate as an LLC must meet the eligibility standards adopted in the final rule.

Under § 26.83(i), a DBE is required to inform the recipient (or UCP) in writing of any change in its circumstances affecting its ability to meet eligibility standards, including control, or any material changes to the information in its application form. The written notice must be provided within 30 days of occurrence of the change. We believe that this procedure will enable recipients to decide whether a firm continues to qualify as a DBE. We do not concur that a DBE should be required to notify the recipient prior to making changes to its management responsibilities. As discussed in connection with the definition of ''existing firm'' in § 26.111, a recipient can deny certification or recertification only to existing firms. It cannot make a determination based on a proposed change, nor should it be required to give advice to a firm on the acceptability of the proposed change.

The May 1997 SNPRM did not propose to permit ''dealers in development'' (*i.e.,* dealers participating in manufacturers' development programs that did not fully meet part 26 ownership and control criteria) to be certified as DBEs. All four comments on the matter opposed the Department's approach. Comments to the May 1997 SNPRM repeated assurances that although disadvantaged individuals own less than 51 percent of these businesses, they exercise control over the daily operations. Further, allowing their participation would accelerate the redemption by these owners of preferred stock held by the manufacturer and hence, their road to 51 percent ownership. Other comments said that the proposal excludes small disadvantaged businesses from reaping the benefits of the DBE program in favor of larger, ''less disadvantaged'' businesses that have been able to accumulate the more than $1 million in start-up costs needed to capitalize a dealership.

Comments requested that DOT grant a narrowly-crafted exception to the DBE ownership requirements which permits these dealers participating in a recognized development program to be eligible as DBE vendors. The car rental industry needs a large number of certified DBE new car dealers from

which to purchase cars, a comment says, to assist them in meeting goals.

In the preamble to the May 1997 SNPRM, we explained why these arrangements do not meet eligibility standards for ownership or control. In particular, to qualify as a DBE, the control of the operations of a business must rest with one or more disadvantaged individuals who own it. In the case of some dealers in development, however, disadvantaged individuals own less than 51 percent of the business. Thus, control of the firm cannot rest with disadvantaged individuals, as required under the statutory definition of a DBE, if the manufacturer is a non-DBE. The Department does not have the authority to grant an exemption, however carefully crafted, from a statutory requirement.

We also concluded that the dealers in development and the manufacturers could be viewed as having a franchisor/franchisee relationship. Under this final rule, a business operating under a franchise agreement is eligible for certification only if it qualifies as a DBE and the franchisor is not affiliated with the franchisee. If the firms are affiliated, then their gross receipts are combined when making a size determination. Since the manufacturer in a dealer development program controls the business, affiliation is inferred. Assuming that the number of employees of the manufacturer exceeds the limit of 500 set by this regulation, dealers in development would not meet the applicable size standard.

Based on this analysis, these arrangements do not meet any of the three statutory standards for DBE eligibility—ownership, control, and size. Since the manufacturer owns as much as 80 percent of the business, we would generally presume that it would retain 80 percent of profits made through participating in the DBE program. We would also expect the DBE generally to retain 20 percent. We believe that counting such dollars as meeting DBE goals conflicts with the goals and objectives of the program. Further, with the very extensive resources available to the manufacturer, these arrangements could be expected to compete successfully against smaller firms, including DBEs meeting eligibility criteria. DBEs could be prevented from gaining the benefits of the program in favor of firms that do not qualify under such criteria. This result also runs counter to the program's goals and objectives.

We stated in the preamble to the May 1997 SNPRM that in the event the Department adopts a developmental program or a mentor-protege program for concessions at a future date, we would reexamine our position to determine if dealers in development qualify. The DOT-assisted contracting portion of part 26 does provide for a mentor-protege program. We point this out simply to observe that DBEs participating as proteges in this program must meet eligibility standards. For these reasons, we have not adopted the recommendation to allow dealers in development to qualify as DBE participation in the concession program.

The fact that the Department cannot make an exception to the certification standards for dealers in development should by no means be taken as a disparagement of the program. The Department applauds the goals of the program and the noteworthy efforts of the major automobile manufacturers to provide opportunities for fledgling businesses to grow into self-sustaining entities.

Section 26.151 What Monitoring and Compliance Procedures Must Sponsors Follow?

This section is not changed substantively from the May 1997 version. The principles established under the DBE contracting program for monitoring prime contractors' compliance may also be useful in the concession program. A primary purpose of the procedures is to verify that the work committed to DBEs as a condition of contract award is actually performed by the DBEs. Sponsors would generally rely on local law to enforce contractual provisions in the event of noncompliance. The grant legislation does not specify contract sanctions.

Section 26.153 Does a Sponsor Have To Change Existing Concession Agreements?

This SNRM rule would retain the May 1997 provision that sponsors are not required to modify or abrogate existing concession agreements, defined as ones executed prior to the effective date of this part. Under the rule, it is the sponsor that establishes and levies individual contract goals. One commenter wanted to know whether bidders and proposers will be responsible for establishing these levels. As discussed above, however, sponsors must provide for public participation in goal-setting process, and overall goals depend, in part, on the percentage levels of individual contract goals.

Section 26.155 What Requirements Apply to Privately-Owned Terminal Buildings?

This provision is identical to the version in the May 1997 SNPRM. We did not receive any comments on it.

Section 26.157 Can Sponsors Enter Into Long-Term, Exclusive Agreements With Concessionaires?

This provision proposes that long-term, exclusive leases are prohibited, except where the sponsor obtains FAA approval. The section proposes a procedure for obtaining such approval, including a list of information FAA needs before it can grant this approval. DBE participation would be a key part of this information. Comments on the May 1997 version of this section generally favored requiring opportunities for DBE participation as part of a long-term, exclusive lease arrangement.

Section 26.159 Does This Subpart Preempt Local Requirements?

This proposed section restates the statutory provision that the regulation does not preempt local requirements. Sponsors may, however, have to take steps to avoid situations where a local requirement conflicts with a Federal requirement. It should be noted also that this provision refers to substantive DBE and similar requirements of local entities, not to Federal requirements for confidentiality (e.g., with respect to information submitted in response to PNW requirements).

Section 26.161 Does This Subpart Permit Sponsors To Use Local Geographic Preferences?

This SNPRM proposes to allow a geographical preference in concessions in limited situations. Several comments on the May 1997 SNPRM addressed this subject. One asked if a sponsor could deny a DBE an opportunity to compete for a contract solely because it resides outside a given geographic area. Another said that lack of guidance on the matter further frustrates reasonable means of compliance because sponsors do not consider the limitations in availability and competitive pricing in the sponsor's geographic area. Another comment also opposed local geographic preferences, saying that if the Department has concluded that Congress made a nationwide determination of discrimination in the airport concession industry, then any remedial action it takes, such as the DBE concession program, must be nationwide in scope. The comment urged the Department to correct this contradiction and prohibit local

preferences in the DBE airport concession program unless a local governmental entity has made an independent determination of racial discrimination in the airport concession industry in the local geographic area. The comment states further:

> Sponsors must not be permitted to rely on an alleged congressional determination of nationwide discrimination to adopt local racial preferences. The Supreme Court declared in Croson: ''We have never approved extrapolation of discrimination in one jurisdiction from the experience of another * * *'' (S)everal firms in the (car rental) industry feature the vehicles of specific automobile manufacturers in their rental fleets. The industry's experience in the past has been that new car dealers selling these featured makes of vehicles are not available in all areas, or that local preferences encourage those dealers that are available to quote vehicle prices that are substantially higher than those dealers outside of the local geographic area.

The Department recognizes that sponsors have a special stake in facilitating participation by firms doing business in their local areas, and it is not the purpose of the DBE program to intrude upon that mission. As noted, the prohibition on local geographical preferences in 49 CFR part 18 applies only to DOT-assisted contracts and not to concessions. Further, under part 18, geographical location can be a selection criterion, subject to certain limitations, when a recipient contracts for architectural and engineering services (49 CFR 18.36(c)(2)). At the same time, the Department recognizes that local geographic preferences have disadvantages, such as the elimination of the benefits of wider competition for business opportunities and the possible loss of opportunities for DBEs who are not located in the locality served by an airport.

Based on these considerations, the Department has decided to propose allowing local geographical preferences, but only under limited circumstances. A sponsor would have to submit a program waiver request under § 26.15 in order to secure approval for a geographic preference. The FAA Administrator would decide whether to grant the request.

The requested waiver would have to conform to several requirements. The preference would have to be described in detail as to area and operation. When the procedure is used, the contract solicitation would have to fully inform competitors of the operation of the preference. The preference would have to be designed and implemented on a race-neutral basis, applying equally to DBEs and non-DBEs. Thus, if a sponsor restricted the geographical area of firms eligible to compete for a given contract, all DBEs and non-DBEs within the area to which the preference pertains must be allowed to compete. A preference would be unacceptable if it conflicted with any provision of the rule or has the effect of defeating or substantially impairing accomplishment of the program's objectives. Any goals set on contracts subject to the preference would have to be based on the relative availability of DBEs within the area covered by the preference and could not have the effect of limiting DBE participation. The preference would not have to be applied to every covered contract, however.

Because of the potential problems that could arise with the use of local preferences, the Department seeks comment on whether, even with these safeguards, the final rule should permit preferences.

Appendix F—Size Standards for the Airport Concession Program

All five comments on the proposed size standard for car dealerships concurred, and the proposal is retained as part of the SNPRM. One comment concurred with the proposed inflationary adjustment to the size standards for concessionaires. The adjustment in the final rule has been updated to reflect more recent statistical information. The Department of Commerce, Bureau of Economic Analysis, prepares estimates of personal consumption expenditures of goods and services, many of which are sold to the public by airport concessionaires. The implicit price deflator for personal consumption expenditures was 11.3 from June 1992 to March 1998. (In the interim between this time and the publication of our final rule based on this SNPRM, FAA will update this information and make adjustments as needed.) Since size standards for concessionaires were originally established and became effective June 1, 1992, the second quarter of 1992 is used as the base period. 11.3 percent represents the rate of increase since that time. By multiplying the appropriate size standard by 1.113, we are able to adjust dollar figures for inflation. Thus, $40,000,000 multiplied by 1.113 yields $44,520,000 as the new size standard for auto rental concessions. $30,000,000, when multiplied by 1.113, yields $33,390,000 as the new size standard for many other categories of concessionaires.

One comment concurred with the proposed size standard of $5.0 million for operators of parking lots. A second comment said that the standard appeared low when compared to ones for concessionaires. We point out, however, that a management contractor does not normally incur the substantial capital costs generally associated with a concession. The proposed standard of $5 million is taken from the SBA's regulations at 13 CFR part 121. Further, it applies only if a parking lot is operated under a management contract. If it is operated as a concession, the applicable size standard would be $33,390,000.

Under the SNPRM, other activities operated under management contracts need to meet the appropriate size standard in 13 CFR part 121. Although the legislation delegates authority to the Secretary to set size standards for the concession program, we have chosen to use SBA's in this case.

One commenter (a sponsor) on the 1997 SNPRM said that the size standards for concessionaires cannot withstand strict scrutiny in determining that a firm is owned and controlled by socially and economically disadvantaged. The comment said that the public may question how a barbershop or shoe shine with gross sales of over $33 million could be considered either socially or economically disadvantaged. It believes that these standards may raise a question of fairness with the public and challenge the program's credibility.

It should be noted that the size standards for concessionaires were initially adopted by the Department when subpart F was added to 49 CFR part 23. The particular standards were selected only after the Department gave full consideration to all comments. A discussion of the comments and various alternatives considered can be found in the preamble to the April 1, 1992 **Federal Register** (57 FR 18400). This notice amended 49 CFR part 23 to add subpart F. It should be noted that size standards employed in the DBE program apply to firms. Owners of DBE firms, by contrast, must be ''socially and economically disadvantaged.'' As such, this standard applies to individuals. We believe that the current size standards conform to the legislative provisions.

Regulatory Analyses and Notices

Executive Order 12866

This rule is a not a significant rule under Executive Order 12866. It is significant under the Department's Rulemaking Policies and Procedures, because of the substantial public interest concerning and policy importance of programs to ensure nondiscrimination in Federally-assisted contracting. Moreover, we do not believe that the rule will have

significant economic impacts. In evaluating the potential economic impact of this rule, we begin by noting that it does not create a new program. It simply revises the rule governing an existing program. The economic impacts of the DBE program are created by the existing regulation and the statutes that mandate it, not by these revisions. Some changes that we propose in this program may have some positive economic impacts. For example, if car rental companies set goals on a national basis, there will be some reductions in administrative burdens and costs for both recipients and the companies.

The rule's ''narrow tailoring'' changes are likely to be neutral in terms of their overall economic impact. These could have some distributive impacts (e.g., if the proposed goal-setting mechanism results in changes in DBE goals, a different mix of firms may work on recipients' contracts), but there would probably not be net gains or losses to the economy. There could be some short-term costs to recipients owing to changes in program administration resulting from ''narrow tailoring,'' however.

In any event, the economic impacts are quite speculative and appear nearly impossible to quantify. Comments did not provide, and the Department does not have, any significant information that would allow the Department to estimate any such impacts. To the extent that we receive additional information about economic impacts from commenters, we will incorporate it at the final rule stage.

Regulatory Flexibility Act Analysis

This part of DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in airport concessions. Virtually all the businesses it affects are small entities. There is no doubt that a DBE rule always affects a substantial number of small entities.

This proposed rule, while improving program administration and facilitating DBE participation and responding to legal developments, appears essentially cost-neutral with respect to small entities in general. It does not impose new burdens or costs on small entities, compared to the existing rule. It does not affect the total funds or business opportunities available to small businesses that seek to work in airport concessions. To the extent that the proposals in this rule (e.g., with respect to changes in the methods used to set overall goals) lead to different goals than the existing rule, some small firms may gain, and others lose, business.

There is no data of which the Department is aware that would permit us, at this time, to measure the distributive effects of the revisions on various types of small entities. It is likely that any attempt to gauge these effects would be highly speculative. For this reason, we are not able to make a quantitative, or even a precise qualitative, estimate of these effects.

Paperwork Reduction Act

A number of provisions of this SNPRM involve information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). These requirements continue existing part 23 requirements, major elements of the DBE program that recipients and contractors have been implementing since the inception of the concessions part of the program. While the SNPRM would modify these requirements in some ways, the Department believes the overall burden of these requirements will remain the same or shrink. These requirements are the following:

- Firms applying for DBE certification must provide information to recipients to allow them to make eligibility decisions. Currently certified firms must provide information to recipients to allow them to review the firms' continuing eligibility. (After the UCP requirements of the rule are implemented, the burdens of the certification provisions should be substantially reduced.)
- Recipients must maintain a directory of certified DBE firms. (Once UCPs are implemented, there will be 52 consolidated directories rather than the hundreds now required, reducing burdens substantially.)
- Recipients must calculate concessions goals and transmit them to the FAA for approval. (The process of setting overall goals is more flexible, but may also be more complex, than under part 23. As they make their transition to the final rule's goal-setting process during the first years of implementation, recipients may temporarily expend more hours than in the past on information-related tasks.)
- Recipients must have a concessions plan approved by the FAA. (The SNPRM includes a one-time requirement to submit a revised program document making changes to conform to the new regulation.)

The Department is in the process of estimating the burden hours resulting from these requirements.

Both as the result of comments and what the Department learns as it implements the DBE program under part 26, it is possible for the Department's information needs and the way we meet them to change. Sometimes the way we collect information can be changed informally (e.g., by guidance telling recipients they need not repeat information that does not change significantly from year to year). In other circumstances, a technical amendment to the regulation may be needed. In any case, the Department will remain sensitive to situations in which modifying information collection requirements becomes appropriate.

As required by the PRA, the Department will submit an information collection approval request to OMB. Organizations and individuals desiring to submit comments on information collection requirements should direct them to the Department's docket for this rulemaking. You may also submit copies of your comments to the Office of Information and Regulatory Affairs (OIRA), OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Transportation.

The Department considers comments by the public on information collections for several purposes:

- Evaluating the necessity of information collections for the proper performance of the Department's functions, including whether the information has practical utility.
- Evaluating the accuracy of the Department's estimate of the burden of the information collections, including the validity of the methods and assumptions used.
- Enhancing the quality, usefulness, and clarity of the information to be collected.
- Minimizing the burden of the collection of information on respondents, including through the use of electronic and other methods.

The Department points out that all the information collection elements discussed in this section of the preamble have not only been part of the Department's DBE program for many years, but have also been the subject of extensive public comment following the 1992 NPRM and 1997 SNPRM. Among the over 900 comments received in response to these notices were a number addressing administrative burden issues surrounding these program elements. In the February 1998 final rule for the rest of part 26, and in this SNPRM, the Department has responded to these comments.

Federalism

The rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT

financial assistance programs, the rule does not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23. The availability of program waivers could allow greater flexibility for state and local participants, however.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Concessions, Government Contracts, Grant programs -transportation, Highways and roads, Mass transportation, Minority business, Reporting and recordkeeping requirements.

Issued This 31st day of July, 2000, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

For the reasons stated in the preamble, the Department proposes to take the following actions:

PART 23—[REMOVED]

1. Remove part 23 of Title 49, Code of Federal Regulations.

2. Revise the authority citation for 49 CFR part 26 to read as follows:

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*); 49 U.S.C 1615, 47107, 47113, 47123; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393, Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107,113.

3. Add a new subpart G of 49 CFR part 26, to read as follows:

Subpart G—DBE Participation in Airport Concessions

Sec.

26.111 Do the provisions of subparts A–F of this Part apply to this subpart?
26.113 What do the terms used in this subpart mean?
26.115 To whom does this subpart apply?
26.117 What are the nondiscrimination and assurance requirements of this subpart for sponsors?
26.119 What information do sponsors have to retain and report about the DBE concession program?
26.121 Who must implement a DBE concessions plan?
26.123 What is the basic DBE goal requirement for sponsors?
26.125 What is the base for a sponsor's goal for concessions and covered activities other than car rentals?
26.127 What is the base for a sponsor's goal car rentals?
26.129 How are a sponsor's goals expressed and calculated?
26.131 What are public participation requirements concerning a sponsor's goals?
26.133 What are the contents of a sponsor's goal submissions to FAA?
26.135 What does FAA do with your goal submission?
26.137 What are the sponsor's obligations concerning the use of race-neutral and race-conscious measures?
26.139 What are the steps a sponsor takes to meet its DBE goals?
26.141 How do concessionaires and covered activities other than car rentals meet concession-specific DBE goals?
26.143 How do car rental companies meet concession-specific DBE goals?
26.145 How do sponsors count DBE participation toward goals for items other than car rentals?
26.147 How do sponsors count DBE participation toward car rental goals?
26.149 What certification standards and procedures do recipients use to certify DBE concessionaires?
26.151 What monitoring and compliance procedures must sponsors follow?
26.153 Does a sponsor have to change existing concession agreements?
26.155 What requirements apply to privately-owned terminal buildings?
26.157 Can sponsors enter into long-term, exclusive agreements with concessionaires?
26.159 Does this subpart preempt local requirements?
26.161 Does this subpart permit sponsors to use local geographic preferences?
Appendix F to Part 26—Size Standards for Airport Concessionaires

§ 26.111 Do the provisions of subparts A-F of this part apply to this subpart?

Except where provisions of this subpart differ from or add to those of subparts A–F of this part, the provisions of subparts A–F apply to the DBE program for airport concessions of this subpart G.

§ 26.113 What do the terms used in this subpart mean?

Affiliation has the same meaning as in § 26.5, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR 121.103(f)) do not apply to this subpart.

Car dealership means an establishment primarily engaged in the retail sale of new automobiles or new and used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickups and vans at retail. In the standard industrial classification system, car dealerships are categorized in SIC 5511, ''Motor Vehicle Dealers (New and Used).''

Concession means a for-profit business enterprise, located on an airport subject to this subpart, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor.

(1) For purposes of this subpart, a business is not considered to be ''located on the airport'' solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be ''located on the airport,'' however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine service, a booth selling tickets to the public; in the case of a car rental, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(3) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the sponsor, concessionaire, or airport terminal owner. A concession may be operated under various types of agreements, including:

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(4) A company in the business of placing advertising in airport terminals or on airport grounds on behalf of others is considered to be a concession, even though its offices are not located on the airport and it does not sell its services directly to the public.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service, and skycap services under contract with an air carrier.

(7) Appendix F to this part contains a listing of the types of businesses that are frequently operated as concessions.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Covered activities means concessions, management contracts and subcontracts, and the provision of goods and services to concessionaires.

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Management contract or subcontract means an agreement with a sponsor or another management contractor (but not with a concessionaire) under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the sponsor. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or services to the public.

Material amendment means a substantial change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Small business concern means an existing for-profit business that does not exceed the size standards of appendix F to this part. With respect to concessionaires and other businesses involved in other covered activities under this subpart, the annual gross receipts cap of § 26.65(b) does not apply.

(1) A concessionaire qualifying under this definition that exceeds the size standard after entering a concession agreement, but which otherwise remains eligible, may continue to be counted as DBE participation toward the overall goals and any contract goals set under this subpart, until the current agreement, including the exercise of options, expires.

(2) If a concessionaire or business involved in another covered activity under this subpart was certified as a minority/woman/or disadvantaged business enterprise (MBE/WBE/DBE) prior to [insert effective date of this subpart], pursuant to a requirement in former § 23.43(d) or former subpart F of 49 CFR part 23, and the firm has exceeded the size standard, it may be counted as DBE participation until the current agreement, including the exercise of options, expires, provided that the firm remains otherwise eligible.

(3) Any firm falling under ''Standard Industrial Classification (SIC)'' code 5511 (which applies to car dealerships) shall be considered a small business concern for purposes of this subpart, if it has no more than 500 employees.

(4) The Secretary may periodically adjust the size standards in appendix F to this part for inflation.

Socially and economically disadvantaged individuals has the same meaning as provided in § 26.5, § 26.67 and appendix E to this part, except that for purposes of this subpart, the presumption of economic disadvantage shall be deemed to be rebutted when the individual's personal net worth exceeds $2 million.

Sponsor means the recipient of an FAA grant.

§ 26.115 To whom does this subpart apply?

If you are a sponsor that has received a grant for airport development after January 1988 that was authorized under Title 49 of the United States Code, this subpart applies to you. The threshold of § 26.21(a)(3) does not apply to requirements of this subpart.

§ 26.117 What are the nondiscrimination and assurance requirements of this subpart for sponsors?

(a) As a sponsor, you must abide by the non-discrimination requirements of § 26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this subpart.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after [insert effective date of this subpart]:

(1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 26, subpart G. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 26, subpart G.

(2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 26, subpart G, that it enters and cause those businesses to similarly include the statements in further agreements.

§ 26.119 What information do sponsors have to retain and report about the DBE concession program?

(a) As a sponsor, you must retain sufficient basic information about your program implementation, your certification of DBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this subpart. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) You must submit to FAA an annual analysis of the accomplishments you have made toward achieving your goals. This analysis must show the effect of those results on the overall level of DBE participation in the your concessions program.

(c) You must report data to the appropriate FAA Regional Office. You must comply with this requirement in a format, and with a frequency, determined by the FAA Administrator.

§ 26.121 Who must implement a DBE concessions plan?

(a) If you are the owner of a primary airport, you must implement a DBE concessions plan implementing the requirements of this subpart. If you are the owner of more than one primary airport, you may implement one plan for all your locations. If you do so, you must establish separate overall goals for each location that has received FAA airport development assistance.

(b) You must submit your plan to the appropriate FAA regional office for approval by [insert date nine months from the effective date of this subpart].

(c) If you make any significant changes in this plan, you must provide them to the FAA as soon as you make them.

(d) If you are a sponsor of a non-commercial service airport, a general aviation airport, or a reliever airport, you are not required to implement a DBE concession plan. However, you must take appropriate outreach steps to encourage available DBEs to participate as concessionaires whenever there is a concession opportunity.

§ 26.123 What is the basic DBE goal requirement for sponsors?

(a) If you are a sponsor who must implement a DBE concessions plan, you must establish two different DBE goals. The first is for all concessions and covered activities other than car rentals. The second is for car rentals. Follow the provisions of this section and §§ 26.125—26.139 of this subpart with respect to both these goals.

(b) Your goal submission must cover a three to five-year period, as agreed upon between you and the FAA. The submission must include goals for each year in the period covered by the submission.

Example to Paragraph (b): You make a goal submission for the period 2001–2005. The submission would include an annual goal for car rentals and an annual goal for other concessions and covered activities for 2001, 2002, 2003, 2004, and 2005. You would calculate each of these goals in the same way, using the same data and reasoning (i.e., for Step 1 and Step 2 of the goal-setting process). However, the amount of the goal and the estimate of race conscious/race neutral participation may differ from year to year within the period depending on the types of opportunities for concessions and other covered activities you anticipate during each year of the period.

(c) You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report any significant adjustments to your goals to FAA.

(d) You must submit your goals to the appropriate FAA regional office for review. Your first concessions goal is due [insert a date nine months from the effective date of this subpart]. You then submit new goals by August 1 of each year in which you establish new goals (e.g., for a recipient who will submit a new set of goals every three years, August 1, 2004).

§ 26.125 What is the base for a sponsor's goal for concessions and covered activities other than car rentals?

(a) If you are a sponsor, the base for this goal includes the total gross receipts of concessions and other covered activities at your airport.

(b) This figure includes the gross contract amount of management contracts but does not include the gross receipts of car rental operations.

(c) This figure includes the estimated dollar value of goods and services that a concessionaire (except a car rental) will purchase from DBEs and use in operating the concession.

(d) This figure includes the net payments to the airport for banks and banking services, including automated teller machines (ATM) and foreign currency exchanges.

(e) This figure does not include any portion of a firm's estimated gross receipts that will not be generated from a concession or other covered activity.

Example to Paragraph (e): A firm operates a restaurant in the airport terminal which serves the traveling public and, under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

(f) If you have any concession agreements that do not provide for you to know the value of the gross receipts earned by the concession, you must use the net payment from the concession to the airport and combine these figures with the estimated gross receipts from other agreements for purposes of calculating overall goals. You must identify any such concession agreements in your goal submission.

§ 26.127 What is the base for a sponsor's goal car rentals?

The base for your goal is the total gross receipts of car rental operations at your airport.

§ 26.129 How are a sponsor's goals expressed and calculated?

(a) If you are a sponsor, you must express your goals as a percentage of the base calculated under § 26.125 or § 26.127. This percentage represents your estimate of the DBE participation you would obtain in the absence of discrimination and its effects (i.e., the DBE participation you would expect if there were a ''level playing field'').

(b) You must use a two-step method for calculating the goal.

(1) In Step 1, you determine the relative availability of DBE concessionaires and other covered entities. You use the best available data. Depending on how the markets for different types of business are structured, this relative availability may be determined on a local, regional, or national basis for particular types of businesses. For example, using this data, you would establish a percentage of gross receipts of available DBE concessionsiares/gross receipts of all available concessionaires.

(2) In Step 2, you adjust this availability figure to reflect such factors as the past participation of DBEs in your concessions and other covered opportunities, information from disparity studies, and barriers to DBEs' ability to participate in these concessions opportunities.

(3) Use § 26.45 for guidance in performing Step 1 and Step 2.

(c) If, as an alternative to establishing a goal meeting the requirements of this section, you wish to submit a goal based on a percentage of concession and other covered activity contracts, you must meet the following requirements:

(1) You must submit a program waiver request meeting the requirements of § 26.15(b). In the case of such a request, the Secretary's authority to review and approve the request is delegated to the FAA Administrator.

(2) Your request must include the following additional showings:

(i) More than half of the concession agreements do not provide for the sponsor to know the value of the gross receipts earned; or

(ii) Other circumstances at the airport exist that make it impracticable to use gross receipts as the basis for calculating the goals.

(d) Your goals established under this subpart must provide for participation by all certified DBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this subpart. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 26.131 What are public participation requirements concerning a sponsor's goals?

(a) As a sponsor, you must provide for public participation by taking at least the steps listed in this paragraphs (b) and (c) of this section before submitting your overall goals to FAA (i.e., every three to five years when you submit new concessions goals).

(b) You must consult with minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the sponsor's efforts to increase participation of DBEs.

(c) You must publish a notice announcing your proposed goals and a description of how they were selected. You must make information on your goal selection method, process, and data available for inspection during normal business hours at your main office for 30 days following the date of the notice. You must accept comments on the goals for 45 days from the date of the notice. Your notice must include addresses (including electronic addresses, where available) to which comments may be sent and must be published in general

circulation media and available minority-focus media and trade association publications.

§ 26.133 What are the contents of a sponsor's goal submissions to FAA?

(a) You submission must include your goals, a description of the method used to calculate them, and the data you relied on. You must ''show your work'' to enable the FAA to understand how you concluded your goals are appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(b) You must estimate the portion of your goal you can meet using race-neutral measures (see § 26.137). You then use race-conscious measures to meet the remainder of your goal. You must include your projection of the portions of your goal you expect to be able to meet through race-neutral and race-conscious measures, and the data and analysis on which it is based, in your goal submission to FAA. You must provide data and analysis to FAA supporting your projection.

(c) You must also include information on the concessions that will operate at the airport during the period covered by the submission. For each concession agreement, you must provide the following information, together with any additional information requested by the FAA Regional Civil Rights Officer:

(1) Name of firm (if known).

(2) Type of business (*e.g.* bookstore, car rental, baggage carts).

(3) Beginning and expiration dates of agreement, including options to renew.

(4) For new agreements, method of solicitation proposed by sponsor (e.g. request for proposals, invitation for bids).

(5) Dates that material amendments will be made to the agreement (if known).

(6) The estimated gross receipts for each goal period established in the plan.

(7) Identification of those concessionaires that have been certified under this subpart as DBEs.

§ 26.135 What does FAA do with your goal submission?

(a) FAA will approve or disapprove the way you calculated your goals as part of its review of your plan or goal submission. Except as provided in paragraph (b) of this section, the FAA does not approve or disapprove the goal itself (*i.e.,* the number).

(b) If the FAA determines that way you calculated your goals is inadequate, the FAA may, after consulting with you, establish an adjusted goal. The adjusted goal represents the FAA's determination of an appropriate overall goal for DBE participation in the sponsor's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(c) The provisions of § 26.47 apply in the event you fail to meet your goals.

§ 26.137 What are the sponsor's obligations concerning the use of race-neutral and race-conscious measures?

(a) As a sponsor, you must give priority to implementing race-neutral measures. This means that you must meet as much of your goal through race-neutral efforts as you can. This does not mean that you must use race-neutral measures chronologically before you begin using race conscious-measures.

(b) You must provide your projection of the portion of each of your goals you expect to meet through race-neutral and race-conscious means, respectively, and the basis for this projection, to the FAA as part of your goal submission (see § 26.133(b)).

(c) If your actual participation does not reflect this projection, you must make appropriate adjustments in your use of race-conscious and race-neutral efforts. For example, if you projected meeting a 12 percent overall goal with 2 percent race-conscious participation and 10 percent race-neutral participation, and midway through the period covered by the goal you have only obtained 3 percent race-neutral participation, you would need to consider increasing your use of race-conscious good faith measures.

(d) In any year in which you project meeting part of your goal through race-neutral measures and the remainder through race-conscious measures, you must maintain data separately on DBE achievements obtained through these respective means. You must report this data to the FAA Regional Civil Rights office with the other data you submit under § 26.119 .

§ 26.139 What are the steps a sponsor takes to meet its DBE goals?

(a) You must, to the extent practicable, seek to obtain DBE participation in all types of concessions and other covered activities and not concentrate participation in one category or a few categories to the exclusion of others.

(b) You must include in your concessions plan a narrative description of the types of measures you intend to make to achieve your goals.

(c) The following are examples of race-neutral measures you can implement:

(1) Locating and identifying DBEs who may be interested in participating as concessionaires under this subpart;

(2) Notifying DBEs and other organizations of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of DBEs;

(4) Providing technical assistance to DBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed of DBE requirements during pre-solicitation meetings;

(6) Providing information concerning the availability of DBE firms to competitors to assist them in meeting DBE requirements;

(7) Establishing a business development program (see § 26.35); and

(8) Taking other appropriate steps to foster DBE participation.

(f) The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular opportunities for concessions and other covered activities.

(i) If the goal is to attain a direct ownership arrangement with a DBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from DBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors would have to meet this goal or document that they made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in § 26.51–53 apply with respect to concession-specific goals.

(2) Evaluation credits or other methods that take a competitor's ability to provide DBE participation into account in awarding a concession.

(3) Negotiation with a potential concessionaire to include DBE participation, through direct ownership arrangements or otherwise, in the operation of the concession.

(4) Set-asides, only to the extent permitted in § 26.43(b) .

§ 26.141 How do concessionaires and covered activities other than car rentals meet concession-specific DBE goals?

(a) This section applies to you if you are a concession or covered activity,

other than a car rental company, and the sponsor has set a concession-specific goal concerning your activity.

(b) You must either meet the goal the sponsor has set or demonstrate sufficient good faith efforts to the sponsor. These two ways of meeting your goal are equally acceptable under this subpart.

(c) For purposes of this subpart, making sufficient good faith efforts means taking steps which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to achieve your goal.

(d) Appendix A to this part 26 provides guidance concerning the kinds of good faith efforts that you are expected to make.

§ 26.143 How do car rental companies meet concession-specific DBE goals?

(a) This section applies to you if you are a car rental company and the sponsor has set a concession-specific goal concerning your activity.

(b) You must either meet the goal the sponsor has set or demonstrate sufficient good faith efforts to the sponsor. These two ways of meeting your goal are equally acceptable under this subpart.

(c) The following are examples of good faith efforts you can use:

(1) The methods outlined in § 26.139.

(2) Your efforts to obtain DBE participation through direct ownership arrangements. While this subpart does not require you to seek direct participation by DBEs in car rental operations, the sponsor will consider any efforts you make to do so in evaluating your good faith efforts.

(3) The following additional steps:

(i) Conducting a comprehensive survey of vendors to determine which qualify as DBEs for purposes of the airport concessions program and encouraging other vendors who may be eligible to apply for certification.

(ii) Identifying opportunities for DBE's to provide goods and services, and engage in proactive outreach efforts to inform such firms of the opportunities.

(iii) Joining and supporting local and national minority, women, and small business organizations.

(iv) Advertising in local and national DBE-focused publications for vendors that can provide needed goods and services.

(v) Making DBEs aware of solicitations in a timely manner and meeting with firms to determine whether they fulfill requirements as car rental operators, or suppliers of goods and services.

(vi) Documenting outreach efforts, including those that are unsuccessful.

(vii) Whenever a new opportunity arises, using a combination of sources and outreach efforts (such as those cited above) to identify DBEs that fulfill the need.

(c) You are not required to change your corporate structure in order to meet your goal.

§ 26.145 How do sponsors count DBE participation toward goals for items other than car rentals?

(a) As a sponsor, you must apply the counting provisions of this section to your goal for concessions and covered activities other than car rentals. See § 26.147 for information on how to count DBE participation for car rentals.

(b) You count only DBE participation that results from a commercially useful function. For purposes of this subpart, the term commercially useful function has the same meaning as in § 26.55(c), except that the requirements of § 26.55(c)(3) shall not apply to a concession agreement or management contract or subcontract.

(c) Count the total dollar value of a management contract or subcontract with a DBE. However, if the DBE enters into a subcontract with a non-DBE, do not count the portion of the value of the subcontract performed by the non-DBE.

(d) Count the total dollar value of gross receipts a DBE earns under a concession agreement toward the goals. However, if the DBE enters into a subconcession agreement with a non-DBE, do not count any of the gross receipts earned by the non-DBE.

(e) When a DBE performs as a subconcessionaire to a non-DBE, count only the portion of the gross receipts earned by the DBE under its subagreement.

(f) When a concession is performed by a joint venture involving a DBE and a non-DBE, count a portion of the gross receipts equal to the percentage of the ownership and control by the DBE partner in the joint venture. To perform a commercially useful function as part of a joint venture, the DBE must be independently responsible for an identifiable portion of the work of the joint venture.

(g) Count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the ''build-out'').

(h) Count the entire amount of fees or commissions charged by a DBE firm for a *bona fide* service, provided that, as the sponsor, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(i) Count 100 percent of the cost of goods obtained from a DBE manufacturer. For purposes of this subpart, the term *manufacturer* has the same meaning as in § 26.55(e)(1)(ii) .

(j) Count 100 percent of the cost of goods purchased or leased from a DBE regular dealer.

(k) If you obtain goods purchased from a DBE which is neither a manufacturer nor a regular dealer, count credit toward DBE goals as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(l) If a firm has not been certified as a DBE in accordance with the standards in this part, the firm's participation may not count toward DBE goals.

(m) Except in the case of a concessionaire that exceeds the small business size standard during the term of a contract, as referenced under the definition of a ''small business concern,'' the work performed or gross receipts earned by a firm after its eligibility has been removed may not be counted toward DBE goals.

§ 26.147 How do sponsors count DBE participation toward car rental goals?

(a) As a sponsor, you must apply the counting provisions of this section to your goal for car rentals. See § 26.145 for information on how to count DBE participation for concessions and covered activities other than car rentals.

(b) Count the full value of vehicles purchased through DBE car dealers toward your goal. Provided, that neither you nor a car rental company may meet more than 70 percent of a car rental goal through this means.

(c) Count the entire amount of the cost charged by a DBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(d) Count the entire amount of the fee or commission charged by a DBE to manage a car rental concession under an agreement with the concessionaire

toward DBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(e) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(f) For other goods and services, count participation toward DBE goals as provided in §§ 26.55 and 26.145. In the event of any conflict between these two sections, § 26.145 will control.

(g) If a car rental company has a national or regional contract for the purchases of vehicles, other goods, or services, count a pro-rated share of the amount of that contract toward the goals for your airport. Use the proportion of the company's applicable gross receipts as the basis for making this pro-rated assignment of DBE participation.

Example to Paragraph (g): Car Rental Company X signs a regional contract with a DBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in that state. Twenty percent of the value of the cars purchased through the DBE car dealer would count toward the goal of each airport.

(h) While this subpart does not require you to obtain DBE participation through direct ownership arrangements, you count participation through such an arrangement toward your DBE goal.

§ 26.149 What certification standards and procedures do recipients use to certify DBE concessionaires?

(a) If you are a sponsor, you must, except as provided in this section, use the procedures and standards of §§ 26.61–91 to certify DBEs for participation in your concessions program.

(b) The personal net worth threshold used in rebutting the presumption of disadvantage, referenced in § 26.67(b) and in appendix E to this part, is $2 million for purposes of this subpart;

(c) The provisions of § 26.71(n), concerning affiliation, do not apply to this subpart.

(d) Section 26.83 (c)(1) through (c)(6) do not apply to certifications for airport concessions purposes. Instead, in determining whether a firm is an eligible DBE, you must take the following steps:

(1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(2) Analyze the ownership of stock of the firm, if it is a corporation;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(7) If you determine it is necessary to validate the certification information submitted by the firm, perform an on-site visit to the offices of the firm and to any facilities within the sponsor's jurisdiction or local area before making an eligibility determination.

(e) In reviewing the affidavit required by § 26.83(h), you must ensure that the DBE firm meets the appropriate size standard in appendix F to this part.

(f) For purposes of this subpart, the term ''prime contractor'' in § 26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a sponsor.

(g) The procedures of § 26.87(i)(2) apply to this subpart, except when you remove a concessionaire's eligibility because the firm exceeded the size standard after entering a concession agreement. In such instances, the procedures set forth under the definition of a ''small business concern'' in § 26.113 shall apply.

(h) When UCPs are established in a state (see § 26.81), the UCP, rather than individual sponsors, will certify firms for the DBE concessions program.

(i) Car rental companies and private terminal owners are not authorized to certify firms as DBEs. As a car rental company or private terminal owner, you must obtain DBE participation from firms that a sponsor or a UCP has certified as DBEs.

(j) When you certify firms as airport concessionaires, identify them in your directory in a way that makes it easy for readers to find them. For example, you could use a special symbol next to a firm's name in the directory to identify it as a concessionaire or place certified concessionaires in a separate section of the directory.

§ 26.151 What monitoring and compliance procedures must sponsors follow?

(a) If you are a sponsor, you must implement appropriate mechanisms to ensure compliance with the requirements of this subpart by all participants in the program. You must include in your concessions plan the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions shall include a monitoring and enforcement mechanism to verify that the work committed to DBEs is actually performed by the DBEs.

(b) This subpart does not authorize or preclude you from imposing additional requirements on firms engaged, or seeking to be engaged, in contracting or concessions activities at your airport. However, you must include in your concessions plan a description, together with a citation of state or local law, regulation, or policy, to support such additional requirements.

§ 26.153 Does a sponsor have to change existing concession agreements?

No. Nothing in this subpart requires you to modify or abrogate an existing concession agreement (one executed prior to the date the sponsor became subject to this subpart) during its term. When an option to renew such an agreement is exercised or when a material amendment is made, you must assess potential for DBE participation and may, if permitted by the agreement, use any means authorized by this subpart to obtain DBE participation in the renewed or amended agreement.

§ 26.155 What requirements apply to privately-owned terminal buildings?

(a) If you are a sponsor on whose airport there is a privately-owned terminal building that has concessions, this section applies to you.

(b) You must pass through the applicable requirements of this subpart to the private terminal owner by an agreement with the owner or by other means. You must ensure that the terminal owner complies with the requirements of this subpart.

(c) If your airport is a primary airport, you must obtain from the terminal owner the goals and other elements of the DBE concession plan required under this subpart. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this subpart.

(d) If the terminal building is at a non-primary commercial service airport general aviation airport, or reliever airport, the sponsor shall ensure that the owner complies with the requirements in § 26.121(d).

§ 26.157 Can sponsors enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for the operation of concessions. For

purposes of this section, a long-term agreement is one having a term in excess of five years. The FAA has issued guidelines for determining whether an agreement is exclusive, as used in this section. You can obtain them from any FAA Regional Civil Rights Officer or from the FAA Office of Civil Rights, 800 Independence Avenue, SW., Washington, DC 20591, Attention, ACR–4.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional civil rights officer approves of a plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional civil rights officer:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:

(i) A number of DBEs that roughly reflects their availability in the absence of discrimination to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§ 26.125–127 of this subpart.

(ii) You will review the extent of DBE participation before the exercise of each renewal option to consider whether an increase or decrease in DBE participation may be warranted.

(iii) A DBE concessionaire that is unable to perform successfully will be replaced by another DBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement encourage DBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any DBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that DBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (e.g., location, storage and delivery space, ''back-of-the-house facilities'' such as kitchens, window display space, advertising space, and other amenities that will increase the DBE's chance to succeed).

(6) Information on the investment required on the part of the DBE and any unusual management or financial arrangements between the prime concessionaire and DBE.

(7) Information on the estimated gross receipts and net profit to be earned by the DBE.

§ 26.159 Does this subpart preempt local requirements?

Nothing in this subpart preempts any State or local law, regulation, or policy enacted by the governing body of a sponsor, or the authority of any State or local government or sponsor to adopt or enforce any law, regulation, or policy relating to DBEs. In the event that a State or local law, regulation, or policy conflicts with the requirements of this subpart, the sponsor shall, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this subpart.

§ 26.161 Does this subpart permit sponsors to use local geographic preferences?

(a) As a sponsor you are permitted to use a local geographic preference only as provided in this section. By a local geographic preference, we mean any requirement that you impose that gives a DBE located near you an advantage over DBEs from other places in obtaining business as or with a concession or other covered activity at your airport.

(b) You must submit a program waiver request meeting the requirements of § 26.15(b). In the case of such a request, the Secretary's authority to review and approve the request is delegated to the FAA Administrator.

(c) In order for your request to be granted, you must make the following additional showings:

(1) The preference does not conflict with any provision of this part or have the effect of defeating or substantially impairing accomplishment of the objectives of the program;

(2) The preference does not have the effect of limiting or foreclosing DBE participation in your concessions and other covered activities;

(3) The preference will make it possible for you to diversify the DBE firms participating in your concession and other covered activities (e.g., by permitting smaller DBEs to participate that otherwise would be unable to compete in certain fields with larger, better-established DBEs from other areas);

(4) The preference applies on a race-neutral basis, to DBEs and non-DBEs alike;

(5) The preference is consistent with Federal law; and

(6) The preference meets any additional conditions established by the Administrator.

APPENDIX F TO PART 26.—SIZE STANDARDS FOR AIRPORT CONCESSIONAIRES MAXIMUM AVERAGE ANNUAL GROSS RECEIPTS IN PRECEDING 3 YEARS

[In millions of dollars]

Concession	Amount
Auto Rentals	44,520
Toy stores	33,390
Beauty shops	33,390
Vending machines	33,390
Coin-operated lockers	33,390
Florists	33,390
Advertising	33,390
Taxicabs	33,390
Limousines	33,390
Duty free shops	33,390
Local pay telephone service	[1] 1500
Gambling machines	33,390
Other concessions not shown above	33,390
OTHER PARTICIPANTS	
Management contractors:	
Parking lots	5.0
Other	[2]
Motor vehicle dealers (new and used)	[1] 500
Other providers of goods or services	[2]

[1] For these types of businesses, the standard is expressed in terms of number of employees, rather than dollars.

[2] As defined in 13 CFR Part 121.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub–No. 5)]

Modification of the Carload Waybill Sample Reporting Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board solicits comments on modifying the Waybill Sample reporting regulations to require all railroads to

identify international rail traffic moving from or through the United States and to report such traffic in the Waybill Sample as if the traffic had terminated at the United States border. The intent of this proposal is to ensure that the Waybill Sample reflects a representative sample of all railroad traffic moving on the United States rail system.

DATES: Comments are due on October 23, 2000.

ADDRESSES: Send comments referring to STB Ex Parte No. 385 (Sub-No. 5) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, D.C. 20423–0001. *See* 49 CFR part 1104 for specific filing requirements.

FOR FURTHER INFORMATION CONTACT: James Nash, (202) 565–1542 or H. Jeff Warren, (202) 565–1533. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Railroads that annually terminate 4,500 or more carloads (or 5 percent of the carloads in any state) are required to report data, including revenues, on individual movements drawn from a representative sampling of their traffic. This Waybill Sample is used for a variety of purposes by the Board, by parties appearing before the agency, by other Federal and State agencies, and by the public in general. Because of the increasing volume of rail traffic moving between the United States, Canada and Mexico, we are proposing to revise the Waybill Sample reporting requirements to ensure that the United States portion of such traffic is captured in the Waybill Sample. To do so, we seek comment on requiring all railroads operating in the United States: (1) To report traffic moving to Canada or Mexico as if it terminated at the United States border, (2) to identify (''flag'') that traffic as international traffic in the waybill records, and (3) to report only the United States portion of the total revenue. [1]

Without this modification, the Waybill Sample will not reflect information on railroad shipments that originate in the United States and terminate in either Canada or Mexico or that originate in either Canada or Mexico, move though the United States, and terminate outside the United States. International traffic moving from or through the United States is expected to increase significantly as a result of the North American Free Trade Agreement (NAFTA) and this proposal is designed to ensure that the Waybill Sample captures that traffic.

We do not believe this proposed modification will place a significant additional reporting burden on the railroad industry. Only railroads already submitting a Waybill Sample should be affected, and the impact should be limited to a one-time modification of the computer programs used to develop the Waybill Sample. Indeed, the Canadian National Railway Company and the Canadian Pacific Railway Company have volunteered to develop the Waybill Sample for their United States affiliates in accordance with our proposed rules.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting, and recordkeeping requirements.

Decided: August 31, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, Title 49, Part 1244 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for Part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

2. Section 1244.3 is amended by revising the heading and adding paragraphs (c) through (e) to read as follows:

§ 1244.3 Reporting contract shipment waybills and international waybills.

* * * * *

(c) Railroads shall treat international rail traffic that moves from or through the United States, but terminates outside the United States, as terminating at the United States border.

(d) Railroads shall identify (''flag'') such movements as international traffic in the waybill records.

(e) Railroads shall include only the United States portion of the total revenue of international traffic. The United States portion shall be calculated as the total shipment revenue less that portion of the total revenue attributable to those segments of the movement occurring outside the United States.

[FR Doc. 00–23136 Filed 9–7–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Waybill Sample reporting railroad would be required to calculate the revenue for international traffic as the total shipment revenue less that portion of the total revenue attributable to those segments of the movement occurring outside the United States.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF79

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Threatened Status and Critical Habitat Determination for *Silene spaldingii* (Spalding's Catchfly)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposal to list *Silene spaldingii* (Spalding's catchfly) as a threatened species, and our critical habitat determination for the species. The comment period is extended to accommodate the public notice requirement of the Act. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule and critical habitat determination. Comments already submitted on the proposed rule and critical habitat determination need not be resubmitted as they will be fully considered in the final determination.

DATES: Comments from all interested parties must be received by September 22, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

2. You may hand-deliver written comments to our Snake River Basin Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to FW1SRBOComment@fws.gov. Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Snake River Basin Office at phone number 208/378–5243.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

A member of the pink or carnation family (Caryophyllaceae), *Silene spaldingii* Watson is a long-lived perennial herb with four to seven pairs of lance-shaped leaves and a spirally arranged inflorescence (group of flowers) consisting of small greenish-white flowers. The foliage is lightly to densely covered with sticky hairs. Reproduction is by seed only; *S. spaldingii* does not possess rhizomes or other means of vegetative reproduction (Lesica 1992). Plants range from approximately 2 to 6 decimeters (dm) (8 to 24 inches (in.)) in height (Lichthardt 1997).

First collected in the vicinity of the Clearwater River, Idaho, between 1836 and 1847, *Silene spaldingii* was originally described by Watson (Watson 1875). This taxon was retained as a full species in a recent, comprehensive regional flora (Hitchcock and Cronquist 1973).

The distribution and habitat of *Silene spaldingii* are limited. The total number of sites discussed in the 90-day finding for *S. spaldingii* (63 FR 63661) was 94, which is larger than the number of populations identified in this final rule. The number of sites stated in the petition finding was based primarily on information (generally known as element occurrence records) available in State natural heritage data bases. In the proposed rule, we felt it was appropriate to group certain element occurrence records for *S. spaldingii* together when the sites were located approximately 1.6 kilometer (km) (1 mile (mi)) or less apart. Thus, the difference in the number of *S. spaldingii* locations described in the 90-day finding does not reflect the actual loss or extirpation of sites.

This species is currently known from a total of 52 populations in the United States and British Columbia, Canada. Of the 51 *Silene spaldingii* populations in the United States, 7 occur in Idaho (Idaho, Lewis, and Nez Perce counties), 7 in Oregon (Wallowa County), 9 in Montana (Flathead, Lake, Lincoln, and Sanders counties), and 28 in Washington (Asotin, Lincoln, Spokane, and Whitman counties). A population consists of one to several sites that are generally located less than 1.6 km (1 mi) apart. The number of *Silene spaldingii* individuals within each population ranges from one to several thousand. Eighteen populations contain more than 50 individuals; only 6 of these populations are moderately large (*i.e.,* contain more than 500 plants). Of the 6 largest populations, 2 are found in Oregon (Wallowa County), 1 in Idaho (Nez Perce County), 1 in Montana (Lincoln County), and 2 in Washington (Asotin and Lincoln Counties). The 6 moderately large populations contain approximately 84 percent (*i.e.,* 13,800 individuals) of the total number of *Silene spaldingii.* The total number of *S. spaldingii* individuals for all 52 populations is about 16,500 (Edna Rey-Vizgirdas, Service, *in litt.* 1999).

Much of the remaining habitat occupied by *Silene spaldingii* is fragmented. For example, *S. spaldingii* sites in Oregon are located at least 64 km (40 mi) from the nearest known sites in eastern Washington. *Silene spaldingii* sites in Montana are approximately 190 km (120 mi) from occupied habitat in Idaho and Washington. Approximately 52 percent of extant *Silene spaldingii* populations occur on private land, 10 percent on State land, 33 percent on Federal land, and 5 percent on Tribal land (E. Rey-Vizgirdas, *in litt.* 1999).

This species is primarily restricted to mesic (not extremely wet nor extremely dry) grasslands (prairie or steppe vegetation) that make up the Palouse region in southeastern Washington, northwestern Montana, and adjacent portions of Idaho and Oregon. In addition, approximately 100 plants were located in British Columbia (Geraldine Allen, University of Victoria, *in litt.* 1996). Palouse prairie is considered to be a subset of the Pacific Northwest bunchgrass habitat type (Tisdale 1986). In Idaho, Palouse prairie is confined to a narrow band along the western edge of central and north-central Idaho, centering on Latah County (Tisdale 1986; Ertter and Moseley 1992). Large-scale ecological changes in the Palouse region over the past century, including agricultural conversion, changes in fire frequency, and alterations of hydrology, have resulted in the decline of numerous sensitive plant species including *Silene spaldingii* (Tisdale 1961). More than 98 percent of the original Palouse prairie habitat has been lost or modified by agricultural conversion, grazing, invasion of non-native plant species, altered fire regimes, and urbanization (Noss *et al.* 1995). Some suitable habitat for *Silene spaldingii* remains on the fringes of the Palouse region and in the forested portion of the channeled scablands in central Washington (John Gamon, Washington Natural Heritage Program, *in litt.* 2000). Low density subdivision and development and increased use of lands in and around the forested portion of the channeled scablands in central Washington likely poses a significant threat to *Silene spaldingii* populations remaining in this area (J. Gamon, *in litt.* 2000).

Silene spaldingii is also found in canyon grassland habitat, another division of the Pacific Northwest bunchgrass habitat type (Tisdale 1986). Canyon grasslands are dominated by the same bunchgrass species as Palouse prairie, but the two habitat types differ somewhat in their overall plant species composition (Janice Hill, The Nature Conservancy, *in litt.* 2000; Greg Yuncevich, Bureau of Land Management, *in litt.* 2000). In addition, canyon grasslands occur in steep, highly dissected canyon systems whereas Palouse grasslands generally occur on gently rolling plateaus. The steep contours in canyon grasslands result in pronounced habitat diversity (G. Yuncevich, *in litt.* 2000). This steepness has also prevented conversion of canyon grasslands to other uses, such as agriculture. Nevertheless, other disturbances (e.g., livestock grazing and the invasion of exotic plant species) have caused significant alterations of the native vegetation of canyon grasslands, although portions of this habitat type have not received heavy use by domestic livestock (G. Yuncevich, *in litt.* 2000). The largest population of *Silene spaldingii* in Idaho occurs in canyon grassland habitat where it is seriously threatened by invasive weeds (J. Hill, *in litt.* 2000).

Due to the small number of populations, *Silene spaldingii* is vulnerable to unrestricted collection, vandalism, or other disturbance. In the absence of a finding that identification of critical habitat would increase threats to a species, if any benefits would result from a critical habitat designation, then a prudent finding is warranted. We do not have specific evidence of collection, vandalism, or trade of this species or any similarly situated species. In the case of *Silene spaldingii*, designation of critical habitat may provide some regulatory benefit through the section 7

requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. Designating critical habitat may also provide some educational or informational benefits.

On December 3, 1999 (64 FR 67814), we published a proposal, with additional background information, to list *Silene spaldingii* as a threatened species. In the proposed rule, we did not propose a critical habitat determination for *Silene spaldingii*, but stated that we would publish such a determination for this species in the **Federal Register** subsequent to the proposed rule. The original comment period closed on February 1, 2000. On April 24, 2000 (65 FR 21711), we published a notice of proposed critical habitat determination for *Silene spaldingii*. In that notice, we proposed that designation of critical habitat is prudent for *Silene spaldingii*, and the comment period closed on June 23, 2000.

Public Comments Solicited

It is our intent that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Our practice is to make comments including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extend allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Snake River Basin Office by September 22, 2000. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional occurrences of this species and the reasons why critical habitat should or should not be considered prudent for this species;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the range of this species and their possible impacts on S*ilene spaldingii* or its habitat;

The final decision on the proposal to list *Silene spaldingii,* and make a critical habitat determination, will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from the proposal.

References Cited

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Lichthardt, J. 1997. Revised report on the conservation status of Silene spaldingii in Idaho. Idaho Department of Fish and Game, Conservation Data Center, Boise, Idaho.

Noss, R.F., E.T. LaRoe III, and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. U.S. Department of the Interior, National Biological Service, Washington, D.C.

Tisdale, E.W. 1961. Ecological changes in the Palouse. Northwest Science 35(4):134–138.

Tisdale, E.W. 1986. Native vegetation of Idaho. Rangelands 8(5):202–206.

Watson, S. 1875. Revision of the genus *Ceanothus,* and descriptions of new plants, with a synopsis of the western species of *Silene.* Proc. Am. Acad. 10:333–350.

Author

The primary author of this notice is Barb Behan, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon.

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 31, 2000.

Don Weathers,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–23037 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000824247-0247-01; I.D. 080200A]

RIN 0648-AO39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This document announces that the South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the commercial penaeid shrimp fishery in the South Atlantic exclusive economic zone (EEZ) and, if there is a need, what management measures should be imposed. If the Council and NMFS determine that there is a need to impose additional management measures, a rulemaking to do so may be initiated. Possible measures include the establishment of a limited entry program to control participation or effort in this fishery. This document intends to inform the public that the Council is establishing a control date of September 8, 2000. Anyone entering the fishery after the control date would not be assured of future access should a management regime that limits the number of participants in the fishery be prepared and implemented. The document also intends to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by October 10, 2000.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; email: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter 727-570-5305; email: steve.branstetter@noaa.gov or Mr. Roger Pugliese 843-571-4366; email: roger.pugliese@noaa.gov.

SUPPLEMENTARY INFORMATION: The commercial penaeid shrimp fishery in the South Atlantic Region is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) as prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS. The FMP is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Council has concerns about increasing shrimping effort in the South Atlantic EEZ and wants to prevent the possibility of the development of an excess harvesting capacity for the shrimp fishery of the region. At its June 2000 meeting, the Council voted unanimously to establish a control date for the commercial penaeid shrimp fishery in the South Atlantic EEZ and requested that NMFS notify the industry by publishing notification of the control date in the **Federal Register**. Accordingly, NMFS publishes this document to notify the industry that September 8, 2000 is the control date for the commercial penaeid shrimp fishery in the South Atlantic EEZ. Implementation of any program that limits participation or effort in the penaeid shrimp fishery would require preparation of an FMP amendment followed by Secretarial review, approval, and implementation. Secretarial review involves publication of a notice of availability of the FMP amendment and of a proposed rule, with pertinent public comment periods.

Establishment of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into this fishery. Fishermen are not guaranteed future participation in the fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council may choose to use a different control date or a management regime that does not make use of such a date or to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

This advanced notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 6 U.S.C. 1801 *et seq.*

Dated: September 1, 2000.

William T. Hogarth,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 00–23132 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 082800F]

RIN 0648–AO31

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 12 is intended to provide procedures for the Pacific Fishery Management Council (Council) to develop rebuilding plans for overfished species, to set guidelines for rebuilding plan contents, and to provide rebuilding plans for NMFS review and approval/disapproval. Amendment 12 would also declare all Pacific coast groundfish to be fully utilized by domestic harvesters and processors.

DATES: Comments on Amendment 12 must be received on or before November 7, 2000.

ADDRESSES: Comments on Amendment 12 or supporting documents should be sent to William Stelle, Jr., Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 12 and the Environmental Assessment/ Regulatory Impact Review are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier at 206–526–6140, Svein Fougner at 562–980–4000, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any new FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the Federal Register that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described here in determining whether to approve the FMP or amendment.

In 1998, the Council adopted Amendment 11 to the FMP to make the FMP consistent with revisions to the Magnuson-Stevens Act. Among other things, Amendment 11 set control rules to define rates of ''overfishing,'' and set defined levels at which managed stocks are considered ''overfished.'' Amendment 11 was approved and incorporated into the FMP in March 1999.

While implementing Amendment 11 provisions for rebuilding overfished stocks, the Council determined that it needed to set procedures within the groundfish FMP for developing overfished species rebuilding plans and for providing NMFS with the opportunity to review and approve/ disapprove those plans. Amendment 12 provides for a process in which the Council will develop overfished species rebuilding plans during its annual specifications and management measures process.

During the Council's two-meeting process for setting annual specifications and management measures (usually September and November) the Council will make overfished species rebuilding plans available for public review, and will incorporate measures to implement those plans within the annual specifications and management measures. Rebuilding plan contents are defined in the FMP and rely upon the Council's annual stock assessment and review process. Once the Council approves a new rebuilding plan, it will submit that plan for NMFS review and approval/disapproval generally at the same time that it submits its annual specifications package for review and approval/disapproval. This process will ensure that rebuilding efforts are incorporated into fishery management measures as quickly and efficiently as

practicable, and that they are consistent with management measures for other groundfish species

Public comments on Amendment 12 must be received by November 7, 2000, to be considered by NMFS in the decision whether to approve Amendment 12. A proposed rule to implement Amendment 12 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulations to implement Amendment 12 in the near future.

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

Dated: September 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–23131 Filed 9–7–00; 8:45 am]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 175
Friday, September 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–00–06]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Dairy Forward Pricing Pilot Program.

DATES: Comments on this notice must be submitted on or before November 7, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Nicholas Memoli, Marketing Specialist, Order Formulation Branch, Rm. 2971–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address *Nicholas.Memoli@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pricing Pilot Program.

OMB Number: 0581–0190.

Expiration Date of Approval: 09–30–00.

Type of Request: Extension and revision of an emergency approved information collection.

Abstract: In accordance with Public Law 106–113 (113 Stat. 1536, Section 1001(a)(8)), amending the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674), the Dairy Forward Pricing Pilot Program became effective on July 19, 2000. The pilot program permits a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract, provided that such milk does not exceed the handler's nonfluid use of milk for the month. Under the pilot program, a one-page disclosure statement must be submitted each time a dairy farmer enters into a forward contract. The disclosure statement explains to the dairy farmer that the program is voluntary and that by entering into the program with a handler, the dairy farmer will forfeit his or her right to the minimum prices provided under the order.

The information collection requirements in this request are essential to carry out the intent of the Acts. The information collected is the minimum required. The information collected is used only by authorized employees of the USDA, AMS. The AMS is the primary user of the compiled information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Dairy farmers.

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 burden hours.

Comments are invited on: (1) 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) 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 technological collection techniques or other forms of information technology. Comments may be sent to Nicholas Memoli, Marketing Specialist, Order Formulation Branch, Rm. 2971–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address *Nicholas.Memoli@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 1, 2000.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 00–23025 Filed 9–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–00–09]

United States Standards for Grades of Nonfat Dry Milk (Spray Process), United States Standards for Instant Nonfat Dry Milk and United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) is soliciting comments on proposals to revise the United States Standards for Grades of Nonfat Dry Milk (Spray Process), the United States Standards for Instant Nonfat Dry Milk, and the United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product. Proposed revisions would reduce the Standard Plate Count (bacterial estimates) for U.S. Extra Grade nonfat dry milk (spray process) and instant nonfat dry milk to a maximum of 10,000 per gram, for U.S. Extra Grade dry buttermilk and dry buttermilk product to a maximum of 20,000 per gram, and for U.S. Standard Grade dry buttermilk and dry buttermilk product to a maximum of 75,000 per gram.

DATES: Comments must be submitted on or before November 7, 2000.

ADDRESSES: Written comments may be submitted to Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746 South Building, Stop 0230, P.O. Box 96456, Washington, DC 20090-6456; faxed to (202) 720–2643; or e-mailed to Duane.Spomer@usda.gov. Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for

public inspection at the above address during regular business hours.

The current United States Standards, along with proposed changes, are available either through the above addresses or by accessing AMS' Home Page on the Internet at *www.ams.usda.gov/dairystand.htm.*

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Chief, Dairy Standardization Branch, AMS/USDA/Dairy Programs, Room 2746 South Building, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 720–7473.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and will make copies of official standards available upon request. The United States Standards for Grades of Nonfat Dry Milk (Spray Process), the United States Standards for Instant Nonfat Dry Milk, and the United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Dairy Programs.

When these products are officially graded, the USDA regulations (7 CFR Part 58) governing the grading of manufactured or processed dairy products are used. These regulations require a charge for the grading service provided by USDA.

AMS is proposing to change the United States Standards for Grades of Nonfat Dry Milk (Spray Process), the United States Standards for Instant Nonfat Dry Milk, and the United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Products using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

AMS also administers a voluntary grading program for dry milk products under the Agricultural Marketing Act of 1946. Any interested person, commercial firm, or government agency can, for a fee, have AMS verify that the dry milk products covered by these standards meet the requirements of the applicable U.S. standards. Dry milk products covered by these standards can be packaged into containers bearing the USDA grade shield. The grading program is implemented by the regulation in 7 CFR Part 58.

The United States Standards for Grades of Nonfat Dry Milk (Spray Process) have been in effect since May 22, 1996, the United States Standards for Instant Nonfat Dry Milk have been in effect since August 7, 1996, and the United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product have been in effect since August 23, 1991. AMS initiated these proposed changes following a suggestion by the American Dairy Products Institute (ADPI), a trade association representing the dry milk industry. ADPI requested that the maximum number of bacteria allowed in nonfat dry milk, instant nonfat dry milk, dry buttermilk and dry buttermilk product be reduced. ADPI suggests that these changes would enhance the competitiveness of U.S. dry milk products in international markets since several other exporting countries have bacterial requirements more stringent than current U.S. standards. By reducing the bacterial requirements, the U.S. dry milk industry will be more competitive in international markets. Additionally, the standards would reflect improvements that have occurred in the quality of dry milk products produced in the United States.

Proposed by Dairy Programs, Agricultural Marketing Service:

USDA proposes to lower the maximum bacterial content requirement for the specified product grade standards, as suggested by the American Dairy Products Institute, as follows:

Current standard plate count	Proposed standard plate count
United States Standards for Grades of Nonfat Dry Milk (Spray Process)	
Extra Grade: 40,000/g	Extra Grade: 10,000/g.
United States Standards for Instant Nonfat Dry Milk	
Extra Grade: 30,000/g	Extra Grade: 10,000/g.
United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product	
Extra Grade: 50,000/g	Extra Grade: 20,000/g.
Standard Grade: 200,000/g	Standard Grade: 75,000/g.

This notice provides a 60-day comment period for interested parties to comment on proposed revisions to the standards.

Authority: (7 U.S.C. 1621–1627).

Dated: September 1, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–23024 Filed 9–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma Proposed 69KV Transmission Line Project on the Camino Real Ranger District, Carson National Forest, Taos County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Based on a request made by the Kit Carson Electric Cooperative, the Carson National Forest is preparing an environmental impact statement (EIS) to analyze the effects of a proposal to authorize Kit Carson Cooperative to construct, operate and maintain a new 69 KV transmission line and fiber optic system on National Forest Lands from the Talpa substation to Penoasco, New Mexico. The proposal also includes construction, operation and maintenance of a substation in Penoasco and the relocation of a distribution line between Talpa and the Pot Creek

residential area. The proposal has several parts, some of which pertain directly to National Forest lands and for which the USDA Forest Service will make the decision. Other portions pertain to private lands, such as the proposed substation in Penoasco, portions of the proposed line on the Picuris Pueblo and the State Highway Department, for which Kit Carson Electric Cooperative will negotiate for approval. The purpose of the project is to improve existing service by reducing voltage fluctuations and the number of outages. It is also to provide fiber optic capabilities to a number of small communities in the Penoasco area.

DATES: The proposed action is currently available for review and comment. It is estimated that the draft environmental impact statement (DEIS) will be completed and distributed for comments by the end of November, 2000. A 45 day comment period will follow. The final environmental impact statement and a record of decision is estimated to be released by the end of July 2001.

ADDRESSES: Copies of the proposed action and DEIS will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Power Line Analysis Team. Comments related to the DEIS can be sent to the same address.

RESPONSIBLE OFFICIAL: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not the project will be implemented on Forest Service lands. If so, the Forest Supervisor will decide where, how and when they will be implemented.

FOR FURTHER INFORMATION CONTACT: Power Line Team Leader, Carson Forest Supervisor's Office (505) 758–6200.

40 CFR 1501.7

Dated: August 23, 2000.

Gilbert Vigil,

Forest Supervisor, Carson National Forest.

[FR Doc. 00–23020 Filed 9–7–00; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 10, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: On March 17 and July 21, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 14532 and 45358) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Paper Shredder
75201241 (Strip Cut)
75201242 (Cross Cut)
75201419 (Strip Cut)
75201420 (Cross Cut)

Bag, T-Shirt Style
8105–00–NIB–1023
(Requirements for DeCA Region Northeast)

Services

Grounds Maintenance, Marine Corps Recruit Depot, San Diego, California

Janitorial/Custodial, New Executive Office Building, Jackson Place Townhouses, Winder Building and 1724 F Street, Washington, DC

Janitorial/Custodial, U.S. Fish & Wildlife Service, Great Swamp National Wildlife Refuge, Basking Ridge, New Jersey

Mailing Services, NASA Goddard Space Flight Center, Greenbelt, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–23141 Filed 9–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: October 10, 2000.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Kitchen, Utensils
M.R. 870 (Potato Masher)
M.R. 874 (Ergo Potato Masher)
M.R. 875 (Nutcracker)
M.R. 892 (Ergo Apple Divider)
M.R. 893 (Ergo Grater)
M.R. 894 (Ergo Lemon Zester)
M.R. 895 (Ergo Lemon Reamer)
M.R. 897 (Ergo Melon Baller)
M.R. 898 (Ergo Apple Corer)
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–23142 Filed 9–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 6 p.m. on Friday, September 29, 2000, at the Sheraton Four Points Manchester, 55 John Devine Drive, Manchester, New Hampshire 03060. The Committee will finalize plans for a Fall consultation to be held in Manchester based on their project, ''A Report on the Status of Civil Rights in New Hampshire.'' The Committee will also be briefed by invited guests on local civil rights issues pertinent to the project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Patricia Taylor, 603–883–5813, or Fernando Serpa, Civil Rights Analyst of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 28, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–23078 Filed 9–7–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 090100C]

Submission for OMB Review; Comment Request.

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: American Fisheries Act: Recordkeeping and Reporting Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0401.

Type of Request: Regular submission.

Burden Hours: 888.

Number of Respondents: 26.

Average Hours Per Response: 5 minutes to submit a copy of a cooperative contract to NMFS, 35 minutes to submit an electronic shoreside processor logbook, 5 minutes to submit a cooperative pollock catch report, 8 hours to submit a cooperative preliminary reports, and 8 hours to submit a cooperative final report.

Needs and Uses: NOAA has issued an emergency interim rule to implement portions of the American Fisheries Act. Included are requirements that participating shoreside processors in Alaska must submit electronic logbooks, and that certain fishery cooperatives must submit copies of their contracts, catch reports, and preliminary and final annual reports. This information is needed for the management of the fishery program. These requirements were originally given emergency clearance under the Paperwork Reduction Act, and NOAA is now requesting approval under standard procedures.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion for submission of contracts and catch reports, daily for electronic shoreside processor logbooks, and annually for preliminary and annual reports.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 31, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

FR Doc. 00–23133 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Son Kim Nguyen; Order Denying Export Privileges

On October 20, 1999, Son Kim (Nguyen) was convicted in the United States District Court for the Western District of Louisiana at Lafayette of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 2000)) (the Act).[1] Specifically, Nguyen was convicted of knowingly and intentionally exporting United States military vehicles and military vehicle parts to Vietnam without obtaining the required export license from the Department of Commerce.

Section 11(h) of the Act provides that, at the discretion of the Secretary of

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)).

Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2000), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 766.25 and 750.8(a) of the regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Nguyen's conviction for violating the Act, and after providing notice and an opportunity for Nguyen to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in § 766.25 of the regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Nguyen's export privileges for a period of five years from the date of his conviction. The five-year period ends on October 20, 2004. I have also decided to revoke all licenses issued pursuant to the Act in which Nguyen had an interest at the time of his conviction.

According, *it is hereby Ordered*

I. Until October 20, 2004, Son Kim Nguyen, 8662 Amy Avenue, Garden Grove, California 92841, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the regulations, or in any other activity subject to the regulations, including, but not limited to:

A. Apply for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the regulations, or in any other activity subject to the regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the regulations, or in any other activity subject to the regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any time subject to the regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any time subject to the regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in 766.23 of the regulations, any person, firm, corporation, or business organization related to Nguyen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the regulations where the only items involved that are subject to the regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 20, 2004.

VI. In accordance with part 756 of the regulations, Nguyen may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the regulations.

VII. A copy of this Order shall be delivered to Nguyen. This Order shall be published in the **Federal Register**.

Dated: August 29, 2000.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 00–23079 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DT–M

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Reviews and Recission of Reviews in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and recission of reviews in part.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products (CORE) and certain cut-to-length carbon steel plate (CTL plate) from Canada. These reviews cover two manufacturers/exporters of CORE and three manufacturers/exporters of CTL plate, for the period August 1, 1998 through July 31, 1999.

We have preliminarily determined that sales have been made below normal value (NV) by various companies subject to these reviews. See ''Preliminary Results of Reviews'' section below for the company-specific rates. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct the U.S. Customs Service to assess

antidumping duties based on the difference between the export price (EP) and the NV.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mike Strollo at (202) 482–5255 (Dofasco Inc. and Sorevco Inc. (collectively, Dofasco)), Jacqueline Arrowsmith at (202) 482–4052 (Continuous Colour Coat, Ltd. (CCC)), Mark Hoadley at (202) 482–0666 (Gerdau MRM Steel (MRM) and National Steel Co. (National)), Elfi Blum-Page at (202) 482–0197 (Stelco Inc. (Stelco) and Clayson Steel Co. (Clayson)), or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1999).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on CORE and CTL plate from Canada. On August 23, 1999, Metaux Russel Inc. (Russel) requested a review of its exports of CTL plate. On August 30, 1999, Clayson requested a review of its exports of CTL plate. On August 31, 1999, National requested a review of its exports of CORE. On August 31, 1999, Dofasco requested a review of its exports of CORE.

On August 31, 1999, Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company, petitioners, requested reviews of Stelco's, CCC's, Dofasco's, and Sorevco's exports of CORE.

On August 31, 1999, petitioners also requested a review of Stelco's exports of CTL plate.

On October 1, 1999, in accordance with section 751 of the Act, we published a notice of initiation of administrative reviews of Stelco, CCC, Dofasco, Sorevco, and National, for CORE, and Stelco, Clayson, and Russel for CTL plate covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). In addition, on November 4, 1999, we published a notice of initiation of administrative review of MRM for CTL plate covering the period August 1, 1998 through July 31, 1999 (64 FR 60161).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On April 27, 2000, the Department published a notice of extension of the time limit for the preliminary results in these reviews to July 21, 2000. *See Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 65 FR 24678.

On June 28, 2000, the Department published a second notice of extension of the time limit for the preliminary results in these reviews from July 21, 2000 to August 30, 2000. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 65 FR 39867.

The Department is conducting these reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) CORE, and (2) CTL plate.

The first class or kind, CORE, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, CTL plate, includes hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the

thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.03 to 0.08 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information provided by MRM, CCC, and Clayson using standard verification procedures, including on-site inspections of the manufacturers' facilities and the examination of relevant sales and financial records. Where appropriate, the Department made adjustments to the data provided in its model match and margin calculation programs for these preliminary results based on information obtained during verification. Our verification results are outlined in public versions of the verification reports on file with the Central Records Unit, in room B–099 of the Herbert C. Hoover Building.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents that are covered by the description in the Scope of Reviews section above and sold in the home market during the period of review (POR) to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's November 2, 1999 antidumping questionnaires.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the EP or the CEP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Recission of Review for National and Stelco

Pursuant to 19 CFR 213, National withdrew its request for review for its exports of CORE, and requested that the Department rescind the review in part. Respondents CCC, Dofasco, and Sorevco objected to National's request for the rescission of its review since the request was not made in a timely fashion, pursuant to 19 CFR 351.213(d)(1) of the Department's regulations. We determined that, in accordance with 19 CFR 351.213(d)(1) of the Department's regulations, the Secretary may extend the time limit to request a recission of review if the Secretary decides it is reasonable to do so. We found that it was reasonable to extend the time limit in this case as National's withdrawal of its request for review was submitted before the majority of National's questionnaire response was filed. Therefore, we rescinded the review with respect to National. *See Memorandum for Edward Yang from Mike Strollo through Maureen Flannery: Request for Rescission of Review: National Steel Corporation (National),* dated March 2, 2000.

In addition, pursuant to 19 CFR 351.213(d)(1), petitioners withdrew their request for review with respect to Stelco's exports of both CORE and CTL plate on October 14, 1999. Section 351.213(d)(1) allows the Department to rescind a review if the party that requested the review withdraws the request within 90 days of the publication date of the initiation notice. The Department published the initiation notice on October 1, 1999 (64 FR 60161). Petitioners were the only party to request a review of Stelco's sales. We hereby rescind the review of Stelco with respect to its sales of CORE and CTL plate.

Determination Not To Revoke in Part the Order on CTL Plate

On August 31, 1999, MRM submitted a request, in accordance with section 351.222(b) of the Department's regulations, that the Department revoke the order covering CTL plate from Canada with respect to its sales of this merchandise.

In accordance with section 351.222(b)(2)(iii) of the regulations, this request was accompanied by a certification from MRM that it had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and would not do so in the future. The Department conducted verification of MRM's responses for this period of review.

We have preliminarily decided not to revoke the antidumping order with respect to MRM. On May 28, 1998, the Department initiated an anti-circumvention investigation of MRM based upon information that MRM was circumventing the antidumping duty order on CTL plate by adding small amounts of boron to plate products covered by the order and importing such merchandise as alloy steel products. *Cut-To-Length Carbon Steel Plate From Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 63 FR 29179 (May 28, 1998). We find that the issue of whether a company is engaged in circumventing an antidumping duty order is relevant to whether that company has satisfied the criteria for revocation under section 351.222 of the Department's regulations. In light of the information before the Department concerning MRM's alleged circumvention of the order, we find that MRM has not satisfied the requirements for revocation given that the issue of MRM's alleged circumvention of the order remains unresolved. Although the Court of International Trade issued an injunction with respect to the Department's anti-circumvention proceeding in *Co-Steel Lasco and Gerdau MRM Steel* v. *United States,* Ct. No. 98–08–02684, on August 11, 2000 the Court of Appeals for the Federal Circuit summarily reversed that injunction. *Co-Steel Lasco, et al.* v. *United States,* App. No. 99–1339 (Aug. 11, 2000).

Determination on the Basis of Facts Available

Section 776(a)(2) of the Act provides that: ''If an interested party or any other person—(A) withholds information that

has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

On November 2, 1999, we issued a questionnaire to Russel. Russel did not respond to the Department's questionnaire. Accordingly, the use of facts available is required, under section 776(a)(2)(A) of the Act. Because Russel has provided no information whatsoever, sections 782(d) and (e) are inapplicable.

Furthermore, Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may draw an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Section 776(b)(1) of the Act states that adverse inferences may be based on secondary information, including information drawn from the petition, the final determination, a previous administrative review, or other information placed on the record. Because Russel did not respond to our requests for information, we find that it has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, and we have drawn an adverse inference in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information using independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. No. 103–316, 870 (1994) (SAA) provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA, at 870.

In this case, the adverse facts available rate we are using is the highest dumping margin calculated in any segment of this proceeding, 68.70 percent. This margin was calculated for Stelco in the *Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 60 FR 49582 (Sept. 26, 1995), and has been the ''all others rate'' throughout the proceeding for CTL plate. Had Russel not requested a review of its exports, we would have instructed Customs to automatically liquidate Russel's entries at this all others rate. We can reasonably conclude that if Russel's margin would have been lower than the all others rate, it would have participated in this review. Accordingly, because Russel did not submit a response, we conclude that its calculated rate would have been equal to, if not greater than, the all others rate. Therefore, we conclude that this rate is probative of Russel's experience. Finally, there is no evidence on the record of circumstances indicating that the margin we are using as facts available in this review is not appropriate. In fact, because Russel did not respond to our questionnaire, we have no means of comparing the circumstances of its sales, if it had any, to those of Stelco in the investigation. Therefore, we have corroborated the selected rate ''to the extent practicable'' and the requirements of section 776(c) of the Act are satisfied.

United States Price

For United States price, we used EP when the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted by facts on the record. For certain sales, we used CEP because the sale was made in the United States.

CCC

The Department calculated EP for CCC based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price, net of discounts and price adjustments, for movement expenses (foreign and U.S. freight, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

In accordance with the presumption of our regulations, we used date of invoice as date of sale for CCC's U.S. sales. *See* 19 CFR 351.401(i).

Clayson

The Department calculated EP for Clayson based on packed, delivered prices to customers in the United States. We made deductions from the starting price for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), pursuant to section 772(c)(2) of the Act. As a result of our verification of Clayson's response, we made adjustments to the amounts reported for brokerage and handling, and for freight. *See Memorandum to the File from Elfi Blum-Page, Sales and Cost Verification of Clayson Steel Co.* (August 30, 2000).

In accordance with the presumption of our regulations, we used date of invoice as date of sale for Clayson's U.S. sales. *See* 19 CFR 351.401(i).

Dofasco

For purposes of these reviews, we treated Dofasco, Inc. and Sorevco, Inc. as one respondent, as we have done in prior segments of the proceeding. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Determination of Sales at Less than Fair Value,* 58 FR 37099 (1993), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part,* 65 FR 9243 (February 24, 2000) (*Canadian Steel 5th*). See *Dofasco Analysis Memo* for a complete analysis of the facts regarding the combination of these two respondents for this review.

Dofasco makes certain sales in the United States through its U.S. affiliate Dofasco U.S.A. (DUS). The sales involving DUS are either made through long-term contracts or are spot sales. Evidence on the record indicates that, for spot sales, while DUS is involved, the sales are made by Dofasco. We are treating these sales as EP sales. Based on evidence on the record, we conclude that the long-term contract sales are made by DUS and should be classified as CEP sales. *See* the proprietary *Memorandum to the File from Mike Strollo through Maureen Flannery: Analysis for Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the Preliminary Results of the Sixth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Canada,* August 30, 2000 (*Dofasco Analysis Memo*).

The Department calculated EP and CEP for Dofasco based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price, net of discounts and rebates, for movement expenses (foreign and U.S. movement, and post-sale warehousing) in accordance with section 772(c)(2) of the Act. In addition, for CEP sales, we deducted indirect selling expenses incurred in the United States and Canada associated with economic activities in the United States from the starting price. As in prior reviews, certain Dofasco sales have undergone

minor further processing in the United States as a condition of sale to the customer. In order to determine the value of subject merchandise at the time of exportation of such merchandise to the United States, the Department has deducted the price charged to Dofasco for this minor further processing from gross unit price to determine U.S. price for both EP and CEP sales. *See Canadian Steel 5th.*

In this review, Dofasco's date of shipment in many instances preceded the date of invoice, and therefore we cannot use the date of invoice as the regulations prefer. Accordingly, as provided for in 19 CFR 351.401(i) of the regulations, we used the dates of sale described below. These sale dates reflect the dates on which the exporter or producer established the material terms of sale. We used the date of order acknowledgment as date of sale, as reported by Dofasco for all Dofasco sales in the U.S. market, except for sales made pursuant to long-term contracts. For Dofasco's sales made pursuant to long-term contracts, we used date of the contract as date of sale. In the rare instance of a rush order, we used the date of shipment as date of sale if a coil was shipped before the date of order acknowledgment. We also used shipment date for sales of secondary products for which there is no order acknowledgment. When there was a change in price, we used the date of Dofasco's order reacknowledgment as date of sale.

We used the date of order confirmation as the date of sale, as reported by Sorevco Inc. (Sorevco) for its sales in the home market.

MRM

The Department calculated EP for MRM based on packed, prepaid or delivered prices to customers in the United States. We made deductions from the starting price for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties) pursuant to section 772(c)(2) of the Act.

In accordance with the presumption of our regulations, we used date of invoice as date of sale for MRM's U.S. sales. *See* 19 CFR 351.401(i).

Normal Value

The Department determines the viability of the home market and the comparison market by comparing the aggregate quantity of home market and U.S. sales. We determined that ''the aggregate quantity * * * of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity * * * of its sales of the subject merchandise to the United States.'' 19 CFR 351.404. We, therefore, have determined for each company that the home market is a viable market, pursuant to section 351.404. Moreover, there is no evidence on the record supporting a particular market situation in the exporting companies' country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

We used sales to affiliated customers only where we determined such sales were made at arms-length prices, *i.e.,* at prices comparable to the prices at which the respondents sold identical merchandise to unaffiliated customers.

For both classes or kinds of merchandise under review and for all respondents, except Clayson, the Department disregarded sales below cost of production (COP) in the last completed review. *See Canadian Steel 5th.* We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Therefore, we initiated COP investigations of sales in the home market for CCC, Dofasco, and MRM. For Clayson, petitioners filed an allegation of sales below cost on June 25, 2000, and we determined that there were reasonable grounds to believe or suspect that Clayson was selling CTL plate in Canada at prices below COP, in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, we initiated an investigation to determine whether Clayson's sales of CTL plate were made at prices below the COP during POR. *See Memorandum to Edward Yang from Elfi Blum-Page through Maureen Flannery: Certain Cut-to-Length Carbon Steel Plate from Canada: Initiation of Sales-Below-Cost Inquiry,* dated June 2, 2000.

We compared sales of the foreign like product in the home market with model-specific cost of production figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we used home market sales and COP information provided by each respondent in its questionnaire responses. We made adjustments where warranted based on our findings at verification.

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time. Based on this test, we

disregarded below-cost sales for both classes or kinds of merchandise under review and for all respondents.

In accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same level of trade (LOT) as the U.S. price. *See* the ''Level of Trade Section'' below.

For those product comparisons for which there were sales at prices above COP, we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we made adjustments to NV for differences in circumstances of sale (COS), in accordance with sections 773(a)(6) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments to NV by deducting home market direct selling expenses and adding U.S. direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions paid on EP sales pursuant to 19 CFR 351.410(b).

CCC

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated parties. Home market starting prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market, net of discounts and price adjustments, where applicable.

We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit) and adding U.S. direct selling expenses (credit). When comparisons were made to EP sales on which commissions were paid, but where no commissions were paid on the matching foreign market sales, we made adjustments for CCC's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

In accordance with the presumption of our regulations, we used invoice date as sale date for all of CCC's home market sales. *See* 19 CFR 351.401(i).

Clayson

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers (Clayson made no home market sales to affiliated parties.) Home market prices were based on the packed, delivered prices to purchasers in the home market.

We made adjustments to the starting price, net of discounts, for movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit expense, commissions) and adding U.S. direct selling expenses (credit expense, commissions).

In accordance with the presumption of our regulations, we used date of invoice as date of sale for Clayson's home market sales. *See* 19 CFR 351.401(i).

As a result of our verification of Clayson's response, we recalculated freight expenses for home market and U.S. movement expenses. Also as a result of our verification, we made adjustments to Clayson's COP regarding scrap, G&A, and interest before performing our sales-below-cost test. For a full discussion, *see Memorandum to the File: Analysis for the Preliminary Results of Review for Clayson,* August 30, 2000.

Dofasco

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated parties. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, royalties, and warranty expenses) and adding U.S. direct selling expenses (credit, royalties, and warranty expenses). When comparisons were made to EP sales on which commissions were paid, but where no commissions were paid on the matching foreign market sales, we made adjustments for Dofasco's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e). In addition, we recalculated Dofasco's variable cost of manufacture by deducting Dofasco's claimed adjustment for byproduct profits on sales of industrial coke.

For comparison to CEP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, royalties, and warranty expenses). When comparisons were made to CEP sales on which commissions were paid, but where no commissions were paid on the matching foreign market sales, we made adjustments for Dofasco's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

Based upon our preliminary analysis of Dofasco's sales process, we have determined that Dofasco's sales fall within four sales types. Depending on the type of sale, we used order acknowledgment date, contract date, or shipment date as the date of sale; refer to the ''United States Price'' section above. For a full discussion, *see Memorandum to the File from Mike Strollo through Maureen Flannery: Analysis for Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the Preliminary Results of the Sixth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Canada,* August 30, 2000 (*Dofasco Analysis Memo*).

MRM

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers (MRM made no home market sales to affiliated parties.) Home market prices were based on the packed, ex-factory or delivered prices to purchasers in the home market.

We made adjustments to the starting price, net of rebates, for movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit expense) and adding U.S. direct selling expenses (credit expense). We added to NV U.S. selling commissions. Because comparisons were made to EP sales on which commissions were paid, but no commissions were paid on home market sales, we made adjustments for MRM's home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR 351.410(e).

In accordance with the presumption of our regulations, we used date of

invoice as date of sale for MRM's home market sales. *See* 19 CFR 351.401(i).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, only Dofasco claimed that sales were made at more than one LOT. As discussed below, to evaluate Dofasco's LOT claims, we examined information regarding the distribution systems in both the U.S. and Canadian markets, including the selling functions, classes of customer, and selling expenses for each respondent.

CCC

In both the home market and the United States, CCC reported one LOT. CCC reported two customer categories in the home market and two in the U.S. market, but CCC claimed that the selling functions it performed were the same in each market and did not vary according to customer. CCC also reported two channels of distribution in the home market and two in the United States. CCC did not claim a LOT adjustment.

We analyzed the selling functions performed for various customer categories and channels of distribution in each market. We found that CCC performed substantially similar selling functions regardless of the type of home market customer and, therefore, that one level of trade existed in the home market. We reached the same conclusion regarding the U.S. market.

Finally, we compared the selling functions performed at the home market LOT with those performed at the U.S. LOT and found them substantially similar. Thus, no LOT adjustment was appropriate. For a further discussion of the Department's LOT analysis with respect to CCC, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for CCC,* August 30, 2000.

Clayson

In both the home market and the United States, Clayson reported one LOT and one distribution system with one class of customer in the home market, original equipment manufacturers (OEMs), and one class of customer, OEMs, in the U.S. market. We compared the selling functions performed at the home market LOT with those performed at the U.S. LOT and found them substantially similar. Thus, no LOT adjustment was appropriate.

Dofasco

Dofasco reported three LOTs in the home market. Dofasco defined its LOT categories by customer category: service center, automotive, and construction and converters/manufacturers (construction). We examined the selling functions performed at each claimed level and found that there was a significant difference in selling functions offered to these three categories. We examined narrative descriptions of the various functions performed and the extent to which each function is performed in order to gauge the significance of each function.

Of the several reported selling functions, Dofasco performed only two of the same or similar selling functions at both the automotive and service center sales levels. Dofasco reported fourteen selling functions which were different between these two levels. Additionally, sales to automotive customers are sales to end users, while sales to service centers are sales to resellers. Thus, sales to service centers and automotive customers were made at different stages of marketing. Based upon this fact, we preliminarily conclude that sales to the automotive customers and service centers are made at different levels of trade.

Although both automotive and construction customers are OEMs, we note that both quantitatively and qualitatively, the selling functions offered to automotive customers involve significantly greater selling activities and thus represent a distinct stage of marketing. For example, of the 16 reported selling functions, Dofasco performed only seven of the same or similar selling functions for both automotive and construction customers. Dofasco's functions for these two customer categories differed with respect to nine other activities. Therefore, given these types of differences, we preliminarily conclude that automotive and construction constitute separate levels of trade.

There were numerous differences in selling functions between sales to construction and service center customers. Dofasco performed six reported selling functions for sales to service centers and only four selling functions for sales to construction customers. Of these selling functions, only one was performed for both service centers and construction customers. More importantly, sales to service center customers are sales to resellers, while sales to construction customers are sales to end users. Thus, sales to service centers and construction customers were made at different stages of marketing. Based upon this fact, we preliminarily conclude that sales to service centers and construction customers are made at different levels of trade.

Overall, we determine that the selling functions for the automotive, service center, and construction customer categories are substantially dissimilar from one another and that these sales are made at different stages of marketing. Therefore, we preliminarily determine that the automotive, service center, and construction customer categories should be treated as three LOTs in the comparison market. Dofasco reported the same three LOTs in the U.S. market: automotive, service center, and construction. We preliminarily determine that U.S. LOTs are identical to those of the comparison market.

For those Dofasco sales classified as CEP, which were some of the automotive customers, we reexamined the three U.S. LOTs after excluding those selling functions performed in the United States. We found that for these automotive customers, two selling functions were performed in the United States. Thus, after excluding selling functions performed in the United States, CEP sales to automotive customers were identical to EP sales to

automotive customers and to home market sales to automotive customers except for these two functions. We find that these two functions do not account, quantitatively or qualitatively, for a significant portion of the sales functions provided to these customers. Therefore, we find that these CEP sales do not constitute a separate LOT from EP sales to automotive customers or home market sales to automotive customers.

There were only insignificant differences in selling functions at each LOT between the comparison market and the U.S. market. Therefore, we found that the three U.S. LOTs corresponded to the three comparison market LOTs. The Department did not find that there existed a pattern of consistent price differences between the three levels of trade. Therefore, we did not make LOT adjustments when comparing sales at different LOTs. For a further discussion of the Department's LOT analysis with respect to Dofasco, *see Dofasco Analysis Memo.*

MRM

In both the home market and the United States, MRM reported one LOT and one distribution system with two classes of customers in the home market, distributors and OEMs, and one class of customer, OEMs, in the U.S. market. We analyzed the selling functions and activities performed for customers in each market. We found that MRM performed substantially similar selling functions and activities for both classes of home market customers and, therefore, that one level of trade existed in the home market. Finally, we compared the selling functions performed at the home market LOT with those performed at the U.S. LOT and found them substantially similar. Thus, no LOT adjustment was appropriate.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period August 1, 1998 through July 31, 1999 to be as follows:

Certain Corrosion-Resistant Carbon Steel Flat Products

Manufacturer/Exporter	Margin percentage
CCC	2.94
Dofasco	0.51

Certain Cut-to-Length Carbon Steel Plate

Manufacturer/Exporter	Margin percentage
MRM	0.00
Clayson	10.81
Russel	68.70

The Department will disclose to the parties to the proceeding calculations performed in connection with these preliminary results of review within ten days after the date of public announcement, or, if there is no public announcement, within five days after the date of publication of these preliminary results of review.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific *ad valorem* duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or kind of merchandise made during the POR.

Furthermore, upon publication of the final results of review, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, *i.e.,* margins less than 0.5 percent); (2) for exporters not covered in these reviews, but covered in the less than fair value (LTFV) investigations or a previous review, 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 previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rates established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 68.70 percent for CTL plate (*see Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 60 FR 49582 (Sep. 26, 1995)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notices are published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 777(i)(1) of the Act (19 U.S.C 1677f(i)(1)).

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23127 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of elemental sulphur from Canada.

SUMMARY: The Department of Commerce (''the Department'') is conducting an

administrative review of the antidumping duty order on elemental sulphur from Canada in response to a request from the petitioner, Freeport-McMoRan Sulphur, Inc. (''Freeport''). This review covers imports of subject merchandise from Husky Oil Limited (''Husky''), a producer, and Petrosul International (''Petrosul''), a reseller. The period of review (''POR'') for Husky and Petrosul is from December 1, 1998 through December 31, 1999. The POR for all other entries is December 1, 1998 through November 30, 1999.

We preliminarily determine that respondent Husky has sold subject merchandise at less than normal value (''NV'') during the POR. For the reasons provided in the ''Facts Available'' section of this notice, we preliminarily determine that respondent Petrosul's antidumping rate be based on total adverse facts available, and have applied the highest rate calculated for Petrosul in prior reviews. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for Petrosul and Husky.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1999).

Background

The antidumping dumping duty order for elemental sulphur from Canada was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada,* 64 FR 40553 (July 27, 1999). However, we are conducting this review to cover sales of the subject merchandise made in the United States made by Husky and Petrosul during the 13-month period from December 1, 1998 until the effective date of the revocation.

On December 14, 1999, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on elemental sulphur from Canada (64 FR 69693). In accordance with 19 CFR 351.213(b)(1), on December 30, 1999, the petitioner, Freeport, requested an administrative review of the antidumping order covering the period December 1, 1998, through November 30, 1999, for Husky and Petrosul. On January 26, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review of this order (65 FR 4228). On March 1, 2000, Husky requested that the Department extend the POR by one month to include sales from the end of the POR until the date that the revocation of the order was in effect. On April 11, 2000, the Department informed Husky and Petrosul that we were extending the POR for one month to include December 1999; thus, we would review all sales of the subject merchandise made by Husky and Petrosul in the United States between December 1, 1998 and the effective revocation date of the order.

On February 14, 2000, the Department sent Petrosul a questionnaire (Sections A, B, C, and D). On March 6, 2000, the Department received a letter from Petrosul, stating that Petrosul did not produce or export sulphur to the United States during the POR. The Department reviewed record evidence that indicated Petrosul exported subject merchandise or had knowledge that its sales of subject merchandise in Canada were ultimately destined for the United States. The details of this information are proprietary. *See Analysis for the Preliminary Results in the Administrative Review of Elemental Sulphur from Canada for the period December 1, 1998 through December 31, 1999* (''*Preliminary Analysis Memo*''), dated September 1, 2000. On April 12, 2000, the Department sent a supplemental questionnaire to Petrosul with additional questions regarding Petrosul's statement that it did not produce or export sulphur to the United States during the POR. On May 3, 2000, Petrosul reported, via a telephone conversation, that it would not respond to the Department's April 12, 2000 supplemental questionnaire. See Memorandum for the file, dated May 3, 2000. Thus, Petrosul only submitted a letter to the Department stating that it did not produce or export sulphur to the United States during the POR and did not respond to either the Department's February 14, 2000, questionnaire or the April 12, 2000, supplemental questionnaire.

On February 14, 2000, the Department sent Husky a questionnaire (Sections A, B, C, and D). On March 20, 2000, Husky provided its Section A questionnaire response and on April 20, 2000, Husky provided its Sections B, C, and D response. On May 17, 2000, we issued a supplemental questionnaire to Husky. On June 1, 2000, Husky provided its supplemental questionnaire response.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, from July 17, 2000 to July 20, 2000, we verified sales information provided by Husky, using standard verification procedures, including an examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (''HTS'') subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the Department's written description of the scope of this order remains dispositive.

Facts Available

In accordance with sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for Petrosul's dumping margin. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information

but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this case, section 776(a)(2)(A) of the Act applies because Petrosul withheld information. Petrosul failed to respond to sections A, B, C, and D of the Department's February 14, 2000 questionnaire and to the Department's April 12, 2000 supplemental questionnaire regarding whether it had entries during the POR. Furthermore, subsections 782(c)(1) and (e) of the Act cannot be applied in this case because Petrosul notified the Department that it would not participate in this review. Petrosul at no time notified the Department that it would be unable to submit requested information, nor did Petrosul provide any explanation or alternate form by which to submit the requested information. Section 782(e) of the Act is likewise not applicable because Petrosul provided no information for the Department to consider.

Because Petrosul failed to respond to the Department's questionnaires, we preliminarily determine that, in accordance with sections 776(a) and 782(e) of the Act, Petrosul has not cooperated to the best of its ability, and the use of total facts available is therefore appropriate. *See, e.g., Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review,* 62 FR 2655 (January 17, 1997).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Rep. No. 103–316, at 870. Petrosul's failure to participate in this review, especially in light of evidence that it in fact sold subject merchandise into the United States, demonstrates that it has failed to act to the best of its ability and, therefore, an adverse inference is warranted. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (March 16, 1998). Petrosul has demonstrated that it has the ability to provide sales information for administrative reviews in the past and it provided the Department with no plausible explanation of why it would not participate this time. *See Elemental Sulphur from Canada; Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 45937, 45938. Thus, based on proprietary record evidence, *see, e.g.,* the *Preliminary Analysis Memo,* we are making the adverse inference that had Petrosul cooperated and responded to the Department's questionnaire, Petrosul would have acknowledged its sales of elemental sulphur that were exported by Petrosul to the United States or acknowledged that its sales within Canada were ultimately destined for the United States. However, we must also reach a determination as to what the dumping margin on these sales would have been.

Section 776(b) of the Act authorizes the Department to use as adverse facts available secondary information, that is, information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. The SAA further provides that ''[i]n employing adverse inferences, one factor the [Department] will consider is the extent to which a party may benefit from its own lack of cooperation.'' SAA at 870. It is the Department's normal practice, in situations involving non-responding respondents such as Petrosul, to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding. Therefore, as total adverse facts available, we have applied the rate of 40.38 percent, which was Husky's calculated final margin in the 1992/93 administrative review. *See Final Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Reviews* 62 FR 37970, 37990 (July 15, 1997). The Department previously applied this rate as a total adverse facts available rate for Petrosul and Husky in the 1997/98 administrative review. *See Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review,* 65 FR 11980 (March 7, 2000).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information by reviewing independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value, that is, that it is both reliable and relevant. *See* SAA at 870. The 40.38 percent rate we selected meets these corroboration criteria.

Regarding the reliability of the selected rate, because there are no independent sources for calculated dumping margins, unlike other types of information, such as input costs or selling expenses, the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of that earlier calculated margin. *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 971 (January 7, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.: Final Results of Administrative Review,* 62 FR 2081, 2088 (January 15, 1997); and *Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany,* 64 FR 43342, 43343 (August 10, 1999). Thus, because we have selected a calculated margin from a prior administrative review, we do not need to question its reliability.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Because we know that Petrosul has been supplied by Husky (*see Issues and Decision Memorandum for the Administrative Review of Elemental Sulphur from Canada—12/01/97 through 11/30/98, Comment 3, (see ia.ita.doc.gov/frn),* which corresponds to *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review,* 65 FR 11980 (March 7, 2000)), as facts available, we continue to operate under the presumption that Petrosul is being supplied by Husky in the absence of any other information. Thus, this rate is relevant for Petrosul because it was recently applied to Petrosul in the prior administrative review under the same circumstances, and we are not aware of any circumstances that would render this rate inappropriate.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV. In accordance with section 777A(d)(2), we calculated monthly weighted-average

prices for NV and compared these to individual EP transactions.

Transactions Reviewed

We compared the aggregate volume of Husky's home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product Husky sold in Canada was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because Husky's volume of home market sales of the foreign like product was greater than five percent of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon Husky's home market sales of the foreign like product. Moreover, there is no evidence on the record indicating a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. *See* section 773(a)(1)(C)(iii) of the Act. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in Canada, in the usual commercial quantities, in the ordinary course of trade, and at the same LOT as the EP sales.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by the Husky in the home market during the extended POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For all of Husky's U.S. sales, there were identical sales in the home market on which to base comparisons.

Export Price

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Husky's subject merchandise was sold to the first unaffiliated purchaser located in either Canada (shipped directly from the producer to the U.S. purchaser) or the United States prior to importation, and use of the CEP methodology was not otherwise warranted. We calculated EP based on free on board (f.o.b.) plant or delivered prices to unrelated customers. We made deductions to the starting price for movement expenses (inland freight, brokerage and handling, and tank car leasing expenses) pursuant to section 772(c)(2) of the Act. For a further explanation of how we calculated EP, *see Preliminary Analysis Memo.* We have used Husky's invoice date as the date of sale, in accordance with 19 CFR 351.401(i), except for shipments made prior to the invoice. Husky often invoices its customers after shipment and, therefore, in accordance with the Department's practice, we have used the shipment date as the date of sale in those instances.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Cost of Production (''COP'') Analysis

Because the Department determined that Husky made sales in the home market at prices below the cost of producing the subject merchandise in its most recently completed administrative review (*see, e.g., Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review,* 65 FR 11980 (March 7, 2000)), the Department determined that there are reasonable grounds to believe or suspect that Husky made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on February 14, 2000, to determine whether Husky made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Husky's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expenses, and packing costs. We used home market sales and COP information provided by Husky in its questionnaire responses, with no cost adjustments.

B. Test of Home Market Prices

We compared the POR-long weighted-average COP for Husky, adjusted where appropriate (see above), to its home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the POR-long weighted average COP, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for liquid sulphur to the reported home market prices less any applicable movement charges. Based on this test, we did not exclude any sales from our analysis because the volume of these sales represented less than 20 percent of the volume of sales under consideration for the determination of NV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated Husky's CV based on the sum of Husky's cost of materials, fabrication, SG&A, interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Husky in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Canada.

Price-to-Price Comparisons

We based NV on the home market prices to unaffiliated purchasers (Husky made no sales to affiliated parties). Home market prices were based on ex-factory or delivered prices. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (''COS'') in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 by deducting

home market direct selling expenses (credit) and adding U.S. direct selling expenses (credit).

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find suitable home market sales of the foreign like product. Where applicable, we would make adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. We did not use CV for Husky for these preliminary results of review.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales (which we note is not the case for Husky), if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, Husky did not request a LOT adjustment or a CEP offset. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Canadian markets, including the selling functions, classes of customer, and selling expenses.

In the home market, Husky reported that it sold through two sales channels: (1) to end-users; and (2) to resellers. *See* Husky's March 20, 2000, Section A questionnaire response, at A–9. The selling functions associated with the sales to end-users are credit services. The selling functions associated with the sales to resellers are credit services, and, if requested, freight and delivery arrangements. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Husky reported two sales channels: (1) to end-users; and (2) to resellers. *See* Husky's March 20, 2000, Section A questionnaire response, at A–9. We examined the selling functions performed for each of the two U.S. sales channels. Both sales channels involved freight and delivery arrangements and credit services. Based on the above information, we preliminarily determine that there is one LOT in the United States.

Based on our analysis of the selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the U.S. and home markets and that these sales are made at the same LOT. Therefore, a LOT adjustment is not appropriate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period December 1, 1998 through December 31, 1999:

Manufacturer/exporter/reseller	Margin (percent)
Husky Oil Limited	0.55
Petrosul International, Ltd	40.38

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In the event these preliminary results are made final, we will assess antidumping duties on all Petrosul entries at the same rate as the dumping margin (*i.e.*, 40.38 percent) since the margin is not a current calculated rate for the respondent, but a rate based upon total facts available pursuant to section 776(a) of the Act. Also, if these preliminary results are made final, we will assess importer-specific antidumping duties on all appropriate Husky entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

Because the antidumping duty order on elemental sulphur from Canada has been revoked, effective January 1, 2000, no cash deposits are required for entries of elemental sulphur from Canada for entries on or after January 1, 2000. *See Revocation of Antidumping Finding: Elemental Sulphur From Canada*, 64 FR 40553 (July 27, 1999).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23123 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: We preliminarily determine that sales of certain helical spring lock washers from the People's Republic of China were made below normal value during the period October 1, 1998 through September 30, 1999. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or 482–1778, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1999).

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914). The Department notified interested parties of the opportunity to request an administrative review of this order on October 20, 1999 (64 FR 56486). The petitioner, Shakeproof Assembly Components Division of Illinois Tool Works, Inc., requested that the Department conduct an administrative review of Zhejiang Wanxin Group Co. Ltd. (ZWG), the predecessor firm to Hang Zhou Spring Washer Co. (collectively Hangzhou) on October 28, 1999. The notice of initiation of this administrative review was published on December 3, 1999 (64 FR 67846).

On February 1, 2000, Hangzhou responded to the Department's December 9, 1999 questionnaire. On April 12, 2000, the Department provided parties with an opportunity to submit information regarding appropriate surrogate values. On May 12 and May 24, 2000, respectively, both Hangzhou and petitioner submitted initial and rebuttal surrogate value comments. On May 15, 2000, the Department issued a supplemental questionnaire to Hangzhou. Hangzhou submitted its supplemental questionnaire response on June 9, 2000.

On June 15, 2000, the Department extended the time limit for completion of the preliminary results in this proceeding until August 31, 2000 (*See* 65 FR 37521).

On June 23 and 24, 2000, we conducted verification of the sales and factors of production questionnaire responses submitted by Hangzhou in Xiaoshan City, PRC. We issued the verification report on August 14, 2000.

The Department is conducting this administrative review in accordance with Section 751 of the Act.

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

This review covers the period October 1, 1998, through September 30, 1999.

Verification

As provided in section 782(i) of the Act, we verified sales and factors of production information provided by Hangzhou in Xiaoshan City, PRC, using standard verification procedures, including an examination of relevant accounting and production records and original source documents provided by the respondents.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide,* 59 FR at 22587 and *Sparklers,* 56 FR at 20589.)

In each of the previous administrative reviews of the antidumping duty order on HSLWs from the PRC, covering successive review periods from October 1, 1993 through September 30, 1998, we determined that Hangzhou's predecessor, ZWG, merited a separate

rate. We have found that the evidence on the record in this review, including information examined at verification, also demonstrates an absence of government control, both in law and in fact, with respect to Hangzhou's export activities according to the criteria identified in *Sparklers,* and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have assigned Hangzhou a separate rate.

Export Price

Because Hangzhou sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the FOB price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight and brokerage and handling. We valued these deductions using surrogate country cost data. We selected India as the surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC HSLWs industry is a market-oriented industry (MOI) and, consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors of production (FOP) in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that India is at a comparable level of economic development to that of the PRC. Also, India is a significant producer of comparable merchandise. Therefore, for this review, we have used Indian prices to value the FOP except where a meaningful amount of the factor was purchased from a market economy supplier and paid for in a market economy currency. (*See* Memorandum to Susan Kuhbach from Jeff May, dated April 7, 2000, ''Certain Helical Spring Lock Washers from the PRC: Nonmarket Economy Status and Surrogate Country Selection,'' which is on file in the Central Records Unit—Public File.)

We selected, where possible, publicly available values from India which were: (1) Average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and, (4) tax-exclusive. We valued the factors of production as follows:

- A meaningful amount of the input carbon steel wire rod was purchased from the United Kingdom, a market economy supplier, and paid for in a market economy currency. Pursuant to 19 CFR 351.408(c)(1), we valued this factor using the price paid to the market economy supplier. Thus, for carbon steel wire rod values, we used the average cost per metric ton of carbon steel wire rod imported from the United Kingdom by Hangzhou during the POR. We made adjustments to account for the freight costs incurred between the port and Hangzhou.
- To value the scrap steel sold by Hangzhou, we used per kilogram values obtained from the *Monthly Statistics of the Foreign Trade of India—Imports* (*MFTI*) as a by-product offset.
- To value the chemicals used in the production and plating process of HSLWs, we used per kilogram import values obtained from *MFTI* and the Indian publication *Chemical Weekly.* We adjusted these values, where appropriate, to reflect inflation using the Wholesale Price Index (WPI) as reported in the *International Financial Statistics* published by the International Monetary Fund (IMF). We also adjusted these values to account for freight costs incurred between the supplier and Hangzhou.
- To value coal, we used a per kilogram value obtained from the *MFTI*. We adjusted this value to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the supplier and Hangzhou.
- To value electricity, we used the electricity price data from two sources *1995 Conference of Indian Industries: Handbook of Statistics* (CII Handbook) and data from the Center for Monitoring Indian Economy (CMIE). We adjusted the value to reflect inflation using the electricity sector-specific inflation index published in the RBI Bulletin.
- To value water, we used the *Second Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank in 1997. We adjusted the value to reflect inflation using the WPI published by the IMF.
- For labor, we used the regression-based wage rate for the PRC in ''Expected Wages of Selected NME Countries,'' located on the Internet at *http://www.ia.ita.doc.gov/wages/.* Because of the variability of wage rates in countries with similar per capita gross domestic product's (GDP), section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source for the regression wage rates is ''Expected Wages of Selected NME Countries—1998 Income Data,'' *Year Book of Labour Statistics 1999,* International Labour Office, (Geneva: 1999).
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January, 1997 *Reserve Bank of India Bulletin* for the Indian industry group ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs, SG&A as a percentage of ML&E plus overhead (*i.e.,* cost of manufacture), and the profit rate as a percentage of the cost of manufacture plus SG&A.
- For packing materials, we used the per kilogram values obtained from the *MFTI*. Where necessary, we adjusted these values to reflect inflation using the WPI published by the IMF. We also made adjustments to account for freight costs incurred between the PRC supplier and Hangzhou.
- To value foreign brokerage and handling, we used information reported in *Certain Stainless Steel Wire Rod from India* in documents dated May 12, 1998. We adjusted this value to reflect inflation using the WPI published by the IMF.
- To value truck freight, we used a rate derived from an article in the *Financial Express* of India on November 16, 1998.
- To value shipping freight, we used a rate reported to the Department in the August, 1993 cable from the U.S. Embassy in India which was submitted for and used in the *Final Determination*

of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833 (September 20, 1993). We adjusted the rate to reflect inflation using the WPI published by the IMF.

For a complete description of the factor values used, *see* ''Memorandum to File: Factor Values Used for the Preliminary Results of the Sixth Administrative Review,'' dated August 31, 2000 (Factors Memorandum) a public version of which is available in the Public File.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Hang Zhou Spring Washer Co. Ltd./Zhejiang Wanxin Group Co., Ltd	10/01/98–09/30/99	2.62

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will issue the final results of this administrative review within 120 days from the publication of these preliminary results.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Hangzhou, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC,* 58 FR 48833 (September 20, 1993); and, (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23124 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

LDS Hospital (Intermountain Health Care); Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–006R. *Applicant:* LDS Hospital (Intermountain Health Care), Salt Lake City, UT 84143. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 47404, August 2, 2000. *Order Date:* February 8, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy.

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–23125 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Washington; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–016. *Applicant:* University of Washington, Seattle, WA 98195–1560. *Instrument:* Scanning Tunneling Microscope. *Manufacturer:* Omicron Associates, Germany. *Intended Use:* See notice at 65 FR 47404, August 2, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A scanning tunneling microscope with atomic resolution over a range of 50–1000K, (2) continuous heating of silicon samples to 1500K, (3) scanning force and tunneling microscopes with a scan of 10 μm × 10 μm area over a range of 10mm and (4) operation under ultra-high vacuum (< 1×10^{-10} Torr). The Center for Advanced Microstructure Devices and the National Institute of Standards and Technology

advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–23126 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Cut-to-Length Carbon Steel Plate From Germany; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty order on certain cut-to-length carbon steel plate from Germany for the periods calendar year 1997 and calendar year 1998. For information on the net subsidy for the reviewed companies, as well as for all non-reviewed companies, please see the ''Preliminary Results of Review'' section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Grossman, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3146 or (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the countervailing duty order on certain cut-to-length carbon steel plate from Germany. *See Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany* (58 FR 43765). On August 11, 1998, the Department published a notice of ''Opportunity to Request Administrative Review'' (63 FR 42821) of this countervailing duty order for the period covering calendar year 1997. We received a timely request for a review and a request that this review be deferred for a year under section 351.213(c) of the Department's regulations. On October 29, 1998, the Department deferred that administrative review for one year (63 FR 58009). On August 11, 1999, the Department published a notice of ''Opportunity to Request Administrative Review'' (64 FR 43649) of this countervailing duty order for the period calendar year 1998. We received a timely request for a review, and, on October 1, 1999, the Department published a notice of initiation of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany, covering the period January 1, 1998, through December 31, 1998 (64 FR 53318).

In accordance with 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which reviews were specifically requested. Novosteel SA requested these reviews, however, it is only an exporter. Novosteel SA stated that all of the subject merchandise it exported is produced by Reiner Brach GmbH and Co. KG. Therefore, questionnaire responses were required from the producer. Accordingly, these reviews cover exporter Novosteel SA and producer Reiner Brach GmbH and Co. KG. We received timely allegations of additional subsidies, including allegations of upstream subsidies. We initiated examinations of three of these alleged subsidy programs and determined not to initiate examinations of the alleged upstream subsidy programs. *See* memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, from Team, entitled *1997 and 1998 Administrative Reviews of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Germany: Memorandum Regarding Affiliation, Cross-ownership, Upstream Subsidy Allegations, and Other Subsidy Allegations,* dated August 23, 2000. (This memorandum is on file in public version form in the public file room of room B–099 of the main Commerce building.) These reviews cover 39 programs.

On April 11, 2000, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended (the Act). *See Certain Cut-to-Length Carbon Steel Plate From Germany: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews* (65 FR 19740). Therefore, the deadline for these preliminary results was extended to no later than August 30, 2000. The deadline for the final results of these reviews is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351, unless otherwise indicated.

Scope of the Review

The merchandise subject to these reviews includes hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers (7208.40.3030), (7208.40.3060), (7208.51.0030), (7208.51.0045), (7208.51.0060), (7208.52.0000), (7208.53.0000), (7208.90.0000), (7210.70.3000), (7210.90.9000), (7211.13.0000), (7211.14.0030), (7211.14.0045), (7211.90.0000), (7212.40.1000), (7212.40.5000), (7212.50.0000). Included in these

reviews are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from these reviews is grade X–70 plate. Also excluded from these reviews is certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM, and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

Analysis of Programs

Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine, based on the questionnaire responses, that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the periods of review:

1. Capital Investment Grants.
2. Investment Premium Act.
3. Joint Scheme: Improvement of Regional Economic Structure—GA Investment. Grants and Other GA Subsidies.
4. Ruhr District Action Program.
5. Aid for Closure of Steel Operations.
6. Joint Program: Upswing East.
7. Freight Programs under the Special Subsidies for Companies in the Zonal Border Area.
8. Loan Guarantees under Treuhandanstalt Subsidies.
9. Long-term Loans from the Kreditanstalt fur Wiederaufbau (KfW).
10. Tax Programs under Special Subsidies for Companies in the Zonal Border Area.
11. Structural Improvement Aids.
12. ECSC Article 54 Loans.
13. ECSC Article 54 Interest Rebates.
14. ECSC Redeployment Aid Under Article 56(2)(b).
15. ECSC Article 54 Loans.
16. ECSC Article 54 Interest Rebates.
17. Loans with Reduced Interest Rates under the Steel Restructuring Plan.
18. Federal and State Government Loan Guarantees under the Steel Restructuring Plan.
19. Special Ruhr Plan.
20. Zukunftsinitiative Montaregionen (ZIM).
21. Kreditanstalt fur Wiederaufbau (KfW) Investment Loans for Eastern Germany.
22. Deutsche Ausglechsbank Investment Loans for Eastern Germany.
23. European Recovery Program Loans for Eastern Germany.
24. Loan Guarantee Program Loans for Eastern Germany.
25. Peine-Salzgitter Profit Transfer Agreement and Other Operation Loss Subsidies.
26. Elimination of Duisburg Harbor Tolls.
27. Export Credits at Preferential Rates.
28. Miscellaneous Tax Subsidies.
29. Loans from the Government of Nordrhein-Westphalen.
30. Tax Subsidies for Eastern Germany.
31. European Investment Bank Loans and Loan Guarantees.
32. New Community Instrument Loans.
33. European Regional Development Fund Aid.
34. Nordrhein-Westphalen's Air Pollution Control Program.
35. ECSC Article 54 Loan Guarantees.
36. ECSC Article 56 Conversion Loans.

Preliminary Results of Review

As noted above, we have initiated examinations of three programs as a result of timely additional allegations of subsidy programs. These alleged subsidy programs are:

1. European Social Funds Grants
2. Assistance Measures for the Companies within the Steel Industry to Partially Compensate for Costs of the Social Plans
3. Social Aid for the Workers in the Coal and Steel Industries

Novosteel SA and Reiner Brach GmbH & Co. have stated in questionnaire responses that Novosteel SA and Reiner Brach GmbH and Co. KG have not received assistance by participating in any of the 36 above-listed programs, or by participating in any other government program. Nonetheless, we intend to issue questionnaires regarding the additional alleged subsidy programs in order to confirm non-use of these programs.

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to these administrative reviews. For the periods calendar year 1997 and calendar year 1998, we preliminarily determine the net subsidy for Novosteel SA/Reiner Brach GmbH and Co. KG to be 0.00 percent *ad valorem.*

As provided for in the Act and 19 CFR 351.106(c)(1), any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, pursuant to 19 CFR 351.106(c)(2), if the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Novosteel SA produced by Reiner Brach GmbH and Co. KG, exported on or after January 1, 1997 through December 31, 1997 and January 1, 1998 through December 31, 1998. Also, the cash deposits required for these companies will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the prior antidumping regulation on automatic assessment, which was identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany,* 58 FR 37315 (July 9, 1993). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the periods calendar year 1997 and calendar year 1998, the assessment rates

applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Written comments must be submitted separately for each of these two reviews. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on a disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1).

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23122 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 4, 2000, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 1998 through December 31, 1998.

Our analysis of the comments received on the preliminary results did not lead to any changes of the net subsidy rate. Therefore, these final results are identical to the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Craig Matney, AD/CVD Enforcement, Office 1, Group I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3798 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On May 4, 2000, the Department published the preliminary results of these administrative reviews (*see Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews,* 65 FR 25910 (May 4, 2000)) (''*Preliminary Results*''). We received a case brief from the petitioner, the Magnesium Corporation of America, on June 5, 2000. Norsk Hydro Canada, Inc. (''NHCI''), the sole producer or exporter of the subject merchandise for which a review was requested, and the Government of Quebec filed rebuttal briefs on June 12, 2000. The Department did not conduct a hearing for these reviews because none was requested.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada,* 57 FR 6094 (February 20, 1992).

Period of Review

The period of review for which we are measuring subsidies is from January 1, 1998 through December 31, 1998.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the September 1, 2000, 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, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099

of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov/frn/* under the heading ''Canada.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary net subsidy rate.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these reviews. We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 1998 through December 31, 1998, we determine the net subsidy rate for the reviewed company to be as follows:

NET SUBSIDY RATE

Manufacturer/exporter	Percent
Norsk Hydro Canada, Inc	1.38

The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above on the f.o.b. invoice price on all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named (*see* 19 CFR 351.213(b)). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except NHCI will be unchanged by the results of these reviews.

Accordingly, we will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Except for Timminco Limited, which was excluded from the orders in the original investigations, these rates were established in the first administrative proceeding conducted under the URAA. *See Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 62 FR 48607 (September 16, 1997).

In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the order in the original investigations).

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: September 1, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in the Decision Memorandum

I. Methodology and background information
1. Subsidies valuation information
A. Allocation period
A. Discount rates
II. Analysis of programs
1. Program conferring subsidies
A. Article 7 grant from the Quebec Industrial Development Corporation (''SDI'')
2. Programs determined to be not used
A. St. Lawrence River Environment Technology Development Program
B. Program for Export Market Development
C. The Export Development Corporation
D. Canada-Quebec Subsidiary Agreement on the Economic Development of the Regions of Quebec
E. Opportunities to Stimulate Technology Programs
F. Development Assistance Program
G. Industrial Feasibility Study Assistance Program
H. Export Promotion Assistance Program
I. Creation of Scientific Jobs in Industries
J. Business Investment Assistance Program
K. Business Financing Program
L. Research and Innovation Activities Program
M. Export Assistance Program
N. Energy Technologies Development Program
O. Transportation Research and Development Assistance Program
3. Program from which NHCI no longer derives a countervailable benefit
A. Exemption from payment of water bills
III. Analysis of comments
Comment 1: Description of a program as ''terminated''

[FR Doc. 00–23128 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on September 20, 2000. The meeting will be from 2:00 to 4:00 p.m. at 227 W. 27th Street, New York, New York in the Fashion Theater, Building C at the Fashion Institute of Technology.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482-5155).

Dated: September 1, 2000.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–23043 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Open Meeting Conference Call of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting conference call.

SUMMARY: The President's Export Council (PEC) will hold an open meeting conference call to discuss the PEC's Final Report to the Administration. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. The PEC's charter was most recently renewed by Executive Order 12991.

DATES: Tuesday, September 19, 2000.

TIME: 3 p.m. (Eastern Standard Time)

ADDRESSES: The U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, Room 1411. This open meeting conference call discussion is physically accessible to people with disabilities. Requests for sign language interpretation or any other auxiliary aids should be submitted by August 30, 2000, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC 20230 (Phone: 202–482–1124; Fax: 202–482–4452). Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC 20230 (Phone: 202–482–1124, Fax: 202–482–4452).

Dated: September 5, 2000.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 00–23129 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On August 18, 2000, Dofasco, Inc., filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the full sunset review of U.S. antidumping duty order made by the United States Department of Commerce, International Trade Administration, respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** (65 Fed. Reg. 47379) on August 2, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–08 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on August 18, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 18, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 2, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 24, 2000.

Marsha Iyomasa,

Deputy United States Secretary, NAFTA Secretariat.

[FR Doc. 00–23021 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090100B]

Regulations Under the Marine Mammal Protection Act Governing the Small Take of Marine Mammals Incidental to Specific Activities

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 7, 2000.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kenneth R. Hollingshead, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910-3226, Telephone: (301) 713-2055, ext. 128.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. 1361 et seq.) imposed, with certain exceptions, a moratorium on the taking of marine mammals. Taking means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal. Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA direct the Secretary of Commerce (Secretary) to allow, upon request, the taking of small numbers of marine mammals incidental to specified regulations that, among other things, establish permissible methods of taking provided NMFS determines that the taking is having a negligible impact on affected marine mammals. If a negligible impact on marine mammals can be determined, the MMPA allows the Secretary to authorize the activity provided monitoring and reporting of the activity's impact on marine mammals can be carried out. Procedural regulations outlining the requirements for the submission of requests for taking are contained in 50 CFR 216 Subpart I. Specific regulations governing authorized activities are contained in subsequent subparts to Subpart I. These regulations also require authorized activities to monitor and report interactions with marine mammals.

Information in a request for a Letter of Authorization (LOA) (to conduct activities under the regulations) varies by activity. It is used to determine if the applicant falls within the scope of the specific regulations, needs new regulations, or if an authorization for an Incidental Harassment Authorization (IHA) is warranted. Information required concerns the dates, location, methods and level of activity to determine if the potential taking is covered by the specific regulations and the statute.

Because the negligible impact determination had not been made previously under regulations, information in a request for an IHA needs to include both a description of the activity and an assessment of the impacts on marine mammals in the vicinity of the activity. In this case, the application for a harassment authorization needs to be as detailed as those submitted in a request for regulations that authorize marine mammals takings incidental to the activity.

Reporting takings incidental to the activity is required by the MMPA. Generally, an interim report is required approximately 90 days after completion of an activity or at the end of the authorization, whichever is earlier. If complex data analyses are required, a final report may be required. Ninety-day reports, annual reports, and final reports must include a description of the activity including time, location, and place; a summary of the monitoring program, an assessment of the effects of the activity on marine mammals including the estimated level of take by species, and any other additional requirements listed in either the LOA or IHA.

II. Method of Collection

Written submissions are made responding to requirements in regulations.

III. Data

OMB Number: 0648-0151.

Form Number: None.

Type of Review: Regular submission.

Affected public: Business and other for-profit organizations, not-for-profit institutions, federal and state governments.

Estimated Number of Respondents: 24-30/year.

Estimated Time Per Response: Varies from 3 hrs to 480 hrs depending upon type and complexity.

Estimated Total Annual Burden Hours: 4,565.

Estimated Total Annual Cost to Public: $1,200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 31, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–23134 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees, and SES recertification. The appointment of members to the NOAA PRB will be for a period of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is September 4, 2000.

FOR FURTHER INFORMATION CONTACT: Paul A. Gilmore, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Daniel J. Basta: Chief, Strategic Environmental Assessment Division, National Ocean Service

Stephen B. Brandt: Director, Great Lakes Environmental Research Laboratory, Office of Oceanic and Atmospheric Research

Irwin T. David: Chief Financial Officer/ Chief Administrative Officer, National Weather Service

Susan B. Fruchter: Counselor to the Under Secretary, Office of Policy and Strategic Planning

Thomas A. Gary: Director, Office of Operations, Management and Information, National Marine Fisheries Service

Mary M. Glackin: Deputy Assistant Administrator, National

Environmental Satellite, Data and Information Service
Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of the General Counsel
William T. Hogarth: Deputy Assistant Administrator, National Marine Fisheries Service
Helen M. Hurcombe: Director, Acquisition, Grants and Facility Service, Office of Finance and Administration
John E. Jones, Jr.: Deputy Assistant Administrator for Weather Services, National Weather Service
Christina B. Katsaros: Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Gerald R. Lucas: Deputy Chief Financial Officer, Economic Development Administration, Department of Commerce
Jolene A. Lauria Sullens: Deputy Chief Financial Officer/ Director of Budget, Office of Finance and Administration
John E. Oliver, Jr.: Chief Financial Officer/Chief Administrative Officer, National Ocean Service
Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service

Dated: September 1, 2000.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 00–23038 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–12–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: Thursday, September 14, 2000.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bed Rails

The staff will brief the Commission on options concerning whether the Commission should issue an advance notice of proposed rulemaking (ANPR) addressing a risk of injury/death associated with certain portable bed rails.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 5, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–23273 Filed 9–6–00; 2:59 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Number: Application for Department of Defense Common Access Card—DEERS Enrollment; DD Form 1172–2; OMB Number 0704–[To Be Determined].

Type of Request: New Collection; Emergency processing requested with a shortened public comment period ending September 28, 2000. An approval date by October 10, 2000, has been requested.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 100,000.

Needs and Uses: The information collection is needed to obtain the necessary data to establish eligibility for the Department of Defense (DoD) Common Access Card for those individuals not pre-enrolled in the DEERs, and to maintain a centralized database of eligible individuals. This information is used to establish eligibility for the DoD Common Access Card for individuals either employed by or associated with the Department of Defense; is used to control access to DoD facilities and systems; and it provides a source of data for demographic reports and mobilization dependent support.

Affected Public: Individuals.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or by fax at (703) 604–6270.

Dated: September 1, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23049 Filed 9–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Submission for OMB Review; Comment Request Entitled Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Examination of Records by Comptroller General/Audit-Negotiation now retitled Examination of Records by Comptroller General and Contract Audit. A request for public comments was published at 65 FR 41058, July 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of

information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before October 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses Per Respondent: 20.
Total Responses: 382,840.
Hours Per Response: .167.
Total Burden Hours: 63,934.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit in all correspondence.

Dated: September 1, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–23070 Filed 9–7–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Submission for OMB Review; Comment Request Entitled Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. A request for public comments was published at 65 FR 41057, July 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before October 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses Per Respondent: 3.
Total Annual Responses: 18.
Hours Per Response: 100.
Total Burden Hours: 1,800.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: September 1, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–23071 Filed 9–7–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Submission for OMB Review; Comment Request Entitled Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. A request for public comments was published at 65 FR 41058, July 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before October 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–40, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 125.
Total Burden Hours: 125.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: September 1, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–23072 Filed 9–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 12 September 2000 (800am to 1600pm)

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Victoria J. Prescott, Executive Secretariat, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23050 Filed 9–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 11 September 2000 (100pm to 1700pm)

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Victoria J. Prescott, Executive Secretariat, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

September 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23051 Filed 9–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Improving Fuel Efficiency of Weapons Platforms

ACTION: Notice of meeting.

SUMMARY: The Defense Science Board Task Force on Improving Fuel Efficiency of Weapons Platforms will meet in closed session on September 19–20, 2000, at the Massachusetts Institute of Technology, Amherst E40–55, Cambridge, MA 30332–0801.

The mission of the Defense Science Board is to advise the Secretary of the Defense and the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, The Task Force will review fuel-efficient technologies, including new or improved fuels, engines, Alternative Fueled Vehicles, and other advanced technologies and assess their operational, logistical, cost,and environmental impacts for a range of practical implementation scenarios.

Persons interested in further information should call Commander Brian D. Hughes, USN, at (703) 695–4157.

Dated: September 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–23048 Filed 9–7–00; 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 November 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, 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: September 1, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study to Assess the Quality of Vocational Education in the United States.

Frequency: One-time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 3,000

Burden Hours: 1,500

Abstract: As part of the National Assessment of Vocational Education, the study to assess the quality of vocational education proposes to conduct a nationally representative survey of high school teachers. The 30-minute survey will examine the prevalence of promising instructional practices recommended in the 1998 Perkins Act. It will assess differences in practice between academic and vocational teachers and comprehensive and vocational high schools. Findings from the survey will be incorporated into a report on secondary school vocational education.

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, DC 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. 00–23032 Filed 9–7–00; 8:45 am]

BILLING CODE 4000–01–U

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 November 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, 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: September 1, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: OSFA Customer Satisfaction Survey Master Plan.

Frequency: As needed.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 15,000.

Burden Hours: 100,000.

Abstract: The Higher Education Amendments of 1998 established the Office of Student Financial Assistance (SFA) as the Government's first Performance-Based Organization (PBO). That legislation specifies that one purpose of the PBO is to improve program services and processes for students and other participants in the student financial assistance programs. This requirement establishes an ongoing need for SFA to be engaged in an interactive process of collecting information and using it to improve the delivery of student financial aid. As such, SFA is seeking OMB approval of a clearance process for customer satisfaction surveys and focus groups for years 2001–2003.

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, DC 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 Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@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. 00–23033 Filed 9–7–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Event

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of event.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming convening/event of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this event is required under Section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend.

DATES AND TIMES: Monday, September 25, 2000, from 6–8 p.m.

ADDRESSES: National Press Club, Ball Room, 529 14th Street, NW, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Richard Toscano, Special Assistant for Interagency Affairs, at 202–401–1411 (telephone), 202–401–8377 (fax), richard__toscano@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland Ave., S.W., room 5E110; Washington, D.C. 20202–3601.

SUPPLEMENTARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

At this event, the Commission will celebrate its work under the Clinton Administration and acknowledge ongoing and future efforts to support Latinos in education.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Richard Toscano, at (202) 401–1411, by no later than September 11. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., S.W., Room 5E110, Washington, D.C. 20202 from 9:00 a.m. to 5:00 p.m. (est).

Dated: August 24, 2000.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 00–23036 Filed 9–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–005]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2000.

Take notice that on August 29, 2000, ANR Pipeline Company (ANR), tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective August 28, 2000:

Original Sheet No. 14O

ANR states that it is filing the attached tariff sheet to reflect the implementation of a negotiated rate contract for Reliant Energy Services for service under Rate Schedules FSS. Reliant's new contract will be effective August 28, 2000 and terminate in march 31, 2004. Furthermore, as further defined in Section 7D of FSS Service Agreement, Shipper shall have the right to extend the term of this Agreement through March 31, 2005. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make this tariff sheet effective as of August 28, 2000, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the tariff sheets to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 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, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23055 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–006]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 2000.

Take notice that on August 29, 2000, ANR Pipeline company (ANR), tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective August 28, 2000:

Original Sheet No. 14P

ANR states that it is filing the attached tariff sheet to reflect the implementation of a negotiated rate contract for Dynegy Marketing & Trade for service under Rate Schedule FSS. Dynegy's new contract will be effective August 28, 2000 and terminate on June 30, 2004. Furthermore, as further defined in Section 7D of FSS Service Agreement, Shipper shall have the right to extend the term of this Agreement through June 30, 2005. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make this tariff sheet effective as of August 28, 2000, and to the extent necessary, moves pursuant to 18 C.F.R. 154.7(a)(9) for the tariff sheets to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210. of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene, Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23058 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–570–002]

Deseret Generation & Transmission Co-operative, Inc.; Notice of Filing

September 1, 2000.

Take notice that on August 15, 2000, Deseret Generation & Transmission Co-operative, Inc., tendered for filing its report in compliance with the Commission's order in Allegheny Power Service Co., *et al.,* 90 FERC ¶ 61,224 (2000).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23057 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–010]

Dominion Transmission, Inc.; Notice of Negotiated Rate Compliance Filing

September 1, 2000.

Take notice that on August 29, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation), tendered for filing the following tariff sheet for disclosure of a recently amended negotiated rate transaction First Revised Sheet No. 399A.

DTI requests an effective date of September 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23059 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–110–001 and RP00–1–001]

East Tennessee Natural Gas Company; Notice of Refund Report

September 1, 2000.

Take notice on August 25, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a refund report of Transportation Cost Rate Adjustment amounts credited to customers on their July 14, 2000 invoices.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23060 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2142–031]

FPL Energy Maine Hydro, LLC; Notice of Extension of Deadline for Filing Additional Study Requests, Settlement Agreement Progress Meeting, Public Information Meeting, and Site Visit for the Indian Pond Hydroelectric Project No. 2142–031

September 1, 2000.

On August 24, 2000, FPL Energy Maine Hydro LLC, on behalf of the Indian Pond Hydroelectric Project (FERC No. 2142–031) Settlement Team, filed a request with the Commission to extend the September 14, 2000, due date for additional study requests. At this time, we grant an additional 30 days and so all additional study requests subsequent to our Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests dated January 11, 2000, must be filed with the Commission no later than October 16, 2000.

Because this is the fifth request to extend the additional study request due date, Commission staff have requested a meeting with the Indian Pond Hydroelectric Project Settlement Team to discuss progress on the settlement discussions. Therefore, on September 27, 2000, Commission staff will meet with the Settlement Team at 9 a.m. at the Best Western Senator Inn (Embassy Room), located at 284 Western Avenue, Augusta, Maine (interstate 95, exit 30). Discussions among Commission staff and the Settlement Team will include, but not be limited to, an overview of progress on the settlement discussions and scheduling of the relicensing proceeding.

On September 28, between 7 and 9 p.m., Commission staff will hold a public information meeting to discuss scheduling of the Indian Pond Hydroelectric Project relicensing proceeding and to answer questions concerning relicensing the project. This meeting will be held at the Northern Outdoors Outdoor Center, located on Route 201 in The Forks, Maine.

On September 28 and 29, Commission staff will conduct a site visit of the Indian Pond Hydroelectric Project to include the following: (1) *September 28*—floating the Kennebec River (Harris Dam to The Forks) to view downstream areas affected by the project; and (2) *September 29*—inspection of the Indian Pond Hydroelectric Project facilities and reservoir. The float trip on September 28 will originate from the Harris Dam river access at 10 a.m. and the inspection of project facilities on September 29 will originate at 8 a.m. at the Harris Dam office/store (see attached map).

All interested individuals, organizations, and agencies are invited to attend the meetings and site visit. Please direct any questions regarding the meetings and site visit to Kevin Whalen, FERC coordinator for the Indian Pond Hydroelectric Project, at (202) 219–2790. Logistical constraints associated with site access necessitate that all individuals wishing to attend the site visit contact Robert Richter, FPL Maine Hydro LLC, at (202) 771–3536, or Kevin Whalen at the number above. All participants are responsible for their own transportation to the site.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23061 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–284–000]

Koch Gateway Pipeline Company; Notice of Site Visit

September 1, 2000.

On September 19 and 20, 2000, the staff of the Office of Energy Projects (OEP) will conduct a route review of the existing Index 1 Pipeline and related laterals proposed for abandonment by Koch Gateway Pipeline Company (Koch). These facilities were the subject of an Environmental Assessment prepared by the OEP staff and issued for public review and comment on January 27, 2000. The routes, located in the Dallas-Fort Worth area of Texas, will be inspected by automobile. Representatives of Koch will accompany the OEP staff.

Anyone interested in attending the route review or obtaining further information may contact Mr. Paul McKee of the Commission's External Affairs Office at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23063 Filed 9–7–00; 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 Meeting To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project and Notice Extending Deadline for Filing Requests for Additional Studies and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions

September 1, 2000.

The establishment of the Cooperative Consultation Process (CCP) Team and Scoping Process for relicensing of the St. Lawrence-FDR Power Project (FERC No. 2000–010) (Project) was identified in the Notice of Memorandum of

Understanding, Formation of the Cooperative Consultation Process Team, and Initiation of Scoping Process Associated with Relicensing the St. Lawrence-FDR Power Project issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813. The project is located on the St. Lawrence River, St. Lawrence County, New York.

The CCP Team will meet on September 14, 2000 to continue negotiations on ecological and local issues. The meeting will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10 a.m., located in Massena, New York.

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6141 (fax), E-mail: *Tatham.T@NYPA.Gov*

Mr. Bill Little, Esq., New York State Department of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), E-mail: *WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797 (Jennifer), (202) 219–2152 (fax), E-mail: *Jennifer.Hill@FERC.FED.US*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the internet at *http://www.stl.nypa.gov/index.html.* Information about the Federal Energy Regulatory Commission can be obtained at http://www.ferc.fed.us.

On August 11, 2000, the Commission issued a notice of Scoping Document 2 and request for additional study requests and soliciting preliminary comments, recommendations, terms and conditions, and prescriptions for the St. Lawrence-FDR Power Project. The notice set September 8, 2000, as the deadline for filing comments. On August 18, 2000, the United States Department of the Interior filed a request to extend the deadline to September 29, 2000.

Pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[1] the deadline for the collaborative team stakeholders to file requests for additional studies and preliminary comments, recommendations, terms and conditions, and prescriptions is extended to September 29, 2000.

All comments should be sent to: Mr. John J. Suloway, New York Power Authority, 123 Main Street, White Plains, New York 10601 with one copy filed with the Commission at: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's contact for the Project is Dr. Jennifer Hill, *see* E-mail address and phone number listed above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23062 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2008

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–130–000, et al.]

Engage Energy US, L.P., et al.; Electric Rate and Corporate Regulation Filings

August 30, 2000.

Take notice that the following filings have been made with the Commission:

1. Engage Energy US, L.P., Westcoast Gas Services Delaware (America) Inc.

[Docket No. EC00–130–000]

Take notice that on August 23, 2000, Engage Energy US, L.P. (Engage US) and Westcoast Gas Services Delaware (America) Inc. (WGSI Delaware) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transaction whereby Engage US will assign certain of its wholesale power sales agreements and associated books and records to WGSI Delaware and certain limited partnership interests in Engage US will be sold to CGM, Inc. In addition, the ownership of the general partner of Engage US will change. Pursuant to 18 CFR 388.112 of the Commission's regulations, Applicants request privileged treatment of Exhibit H.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Coyote Springs 2, LLC

[Docket No. EG00–251–000]

Take notice that on August 25, 2000, Coyote Springs 2, LLC, 201 West North River Drive, Spokane, Washington 99201, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposes to develop and own a natural gas-fired combined-cycle electric generation plant with a maximum capacity of 280 megawatts. The facility will be located in Morrow County, Oregon. The facility is scheduled to be completed in June 2002. All of the electric output of the facility will be sold at wholesale.

Comment date: September 20, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Consumers Energy Company

[Docket No. ER00–3520–000]

Take notice that on August 25, 2000, Consumers Energy Company (Consumers), tendered for filing a Service Agreement with El Paso Merchant Energy, L.P. (Customer) under Consumers' FERC Electric Tariff No. 9 for Market Based Sales.

Consumers requested that the Agreement be allowed to become effective July 28, 2000.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3521-000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Entergy Power Marketing Corp., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 49.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00-3522–000]

Take notice that on August 25, 2000, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 323 to add Pepco Energy Services, Inc., to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreement is August 24, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company Docket No.

[ER00–3523–000]

Take notice that on August 25, 2000, Consumers Energy Company (Consumers), tendered for filing a Facility Engineering Authorization Agreement Between Consumers and Kinder Morgan Michigan, LLC [KMPower] (Agreement), dated August 17, 2000, (Agreement). Under the Agreement, Consumers is to perform engineering and other preliminary work associated with providing an electrical connection between a generating plant to be built by KMPower and Consumers' transmission system.

Consumers requested that the Agreements be allowed to become effective by August 17, 2000.

Copies of the filing were served upon KMPower and the Michigan Public Service Commission.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3524-000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service, Inc., and Plum Street Energy Marketing, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 70.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3525–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Northeast Utilities Service Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 27.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3526–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Enron Power Marketing, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 1.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3527–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and North American Energy Conservation Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 12.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3528–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Inc. and IUC Power Services, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 60.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3529–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and New England Power Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 28.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3530–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and Old Dominion Electric Cooperative, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 22.

GPU Energy requests that cancellation be effective the October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3531–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc., and Equitable Power Services Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 67.

GPU Energy requests that cancellation be effective, October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3532–000]

Take notice that on August 25, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing Notice of Cancellation of the Service Agreement between GPU Service Corporation and National Fuel Resource, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 29.

GPU Energy requests that cancellation be effective October 24, 2000.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER00–3533–000]

Take notice that on August 25, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Interconnection and Operation Agreement between Appalachian Power Company and Twelvepole Creek, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of June 27, 2000.

A copy of the filing was served upon the Public Service Commission of West Virginia.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–3534–000]

Take notice that on August 25, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Midwest Power, LLC as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of August 10, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER00–3535–000]

Take notice that on August 25, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, umbrella Transmission Service Agreements with TransAlta Centralia Generation LLC (TransAlta) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff). In addition, PacifiCorp has resubmitted the Tariff in accordance with the Commission's Order No. 614.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–3536–000]

Take notice that on August 25, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Netting Agreement between the Companies and Reliant Energy Services, Inc.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company

[Docket No. ER00–3537–000]

Take notice that on August 25, 2000, Carolina Power & Light Company tendered for filing modifications to its Open Access Transmission Tariff First Revised Volume No. 3, effective February 1, 1998 through June 6, 2000; and modifications to its Open Access Transmission Tariff, Second Revised Volume No. 3, effective June 7, 2000, the date that tariff took effect. CP&L states that the modifications reflect an agreement with interveners that will result in termination of this proceeding. CP&L also notified the Commission that it has reached agreement with interveners that the tariff sheets that were included in its July 18, 1997 unilateral offer of settlement in this docket should be withdrawn

Copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. FirstEnergy System

[Docket No. ER00–3538–000]

Take notice that on August 25, 2000, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for The Energy Authority, Inc., MidAmerican Energy Company (Retail), and MidAmerican Energy Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under the Service Agreements is August 23, 2000 for the above mentioned Service Agreements in this filing.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. LSP Energy Limited Partnership

[Docket No. ER00–3539–000]

Take notice that on August 25, 2000, LSP Energy Limited Partnership (LSP Energy), tendered for filing under Section 205 of the Federal Power Act an executed long-term electric service agreement between LSP Energy and Aquila Power Corporation (now known as Aquila Energy Marketing Corporation) and Utilicorp United, Inc., and an executed long-term electric service agreement between LSP Energy and Virginia Electric and Power Company, each with amendments.

LSP Energy requests an effective date of August 8, 2000 for both service agreements.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. FirstEnergy System

[Docket No. ER00–3541–000]

Take notice that on August 25, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for The Energy Authority, Inc., MidAmerican Energy Company (Retail), and MidAmerican Energy Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under the Service Agreements is August 23, 2000 for the above mentioned Service Agreements in this filing.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Pasadena Cogeneration L.P.

[Docket No. QF96–54–003]

Take notice that on August 24, 2000, Pasadena Cogeneration L.P., 50 West San Fernando Street, San Jose, California 95113, filed with the Federal Energy Regulatory Commission an application to be recertified as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a topping-cycle cogeneration facility located in Pasadena, Texas and consists of three combustion turbine-generators, two heat recovery steam generators, two condensing steam turbine-generators and interconnection equipment. The primary energy source used by the facility is natural gas. The maximum net electric power production capacity of the facility is 787 MW. The facility provides process steam and electric energy to the Houston Chemical Complex, which is owned by Chevron Phillips Chemical Company LP. Surplus electric energy produced by the facility is sold to Houston Lighting & Power Company (HL&P) and other purchasers. HL&P is interconnected with the facility and provides backup services.

Comment date: September 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–23066 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Pinnacle West Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 1, 2000.

Take notice that the following filings have been made with the Commission:

1. Pinnacle West Energy Corporation

[Docket No. ER00–3553–000]

Take notice that on August 29, 2000, Pinnacle West Energy Corporation (PWE) submitted for filing a service agreement under PWE's proposed power sales tariff, for the sale by PWE of certain generation-related ancillary services, to Pinnacle West Capital Corporation.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. NSTAR Services Company v. New England Power Pool, ISO New England, Inc., ISO New England, Inc., and ISO New England, Inc,

[Docket Nos. EL00–62–009 and ER00–2052–007]

Take notice that on August 25, 2000, ISO New England Inc., tendered for filing its Report of Compliance (Part 1 of 2) in response to the Commission's July 26, 2000 Order in these Dockets.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: September 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. NSTAR Services Company v. New England Power Pool, ISO New England, Inc., ISO New England, Inc., and ISO New England, Inc.

[Docket Nos. EL00–62–010 and ER00–2052–008]

Take notice that on August 25, 2000, ISO New England Inc., tendered for filing its Report of Compliance (Part 2 of 2) in response to the Commission's July 26, 2000 Order in these Dockets. The report includes an attachment consisting of a Mitigation report, which is filed with a request for confidential treatment of portions thereof under 18 CFR 388.112.

Copies of said filing and a redacted version of the Mitigation Report have been served upon the Secretary and members of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

Comment date: September 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER99–4470–003]

Take notice that on August 25, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing tariff sheets in compliance with the Commission's order of July 31, 2000, approving the Settlement in the above-referenced proceeding.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Pinnacle West Capital Corporation

[Docket No. ER00–3553–000]

Take notice that on August 29, 2000, Pinnacle West Capital Corporation (PWCC) tendered for filing a service agreement under PWCC's Rate Schedule FERC No. 1, for the sale by PWCC of certain generation-related ancillary services, to Arizona Public Service Company (APS).

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER00–3546–000]

Take notice that on August 29, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with H.Q. Energy Services (U.S.) Inc. and a Service Agreement for Non-Firm Point-to-Point Transmission Service with H.Q. Energy Services (U.S.) Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of August 15, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER00–3161–001]

Take notice that on august 25, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a compliance filing as requested in docket ER00–3161–000.

Copies of the filing have been served on BPMA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–3097–001]

Take notice that on august 25, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing its amendment of the Assignment and Assumption Agreements entered into by and among PPL Electric Utilities Corporation (Assignor), and PPL EnergyPlus, LLC (Assignee) dated April 17, 2000. The amended filing included the original Service Agreements to which the Assignment and Assumption Agreements pertain. Under the assignments the Assignor assigns to the Assignee and the Assignee assumes all of the Assignor's rights and obligations pertaining to the following Service Agreements with Virginia Power:

1. Service Agreement for Short-Term Market Based Rate Power Sales dated May 15, 1995 and accepted by Letter Order dated July 19, 1995 in Docket No. ER95–1214–000;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service dated April 17, 1997 and accepted by Letter Order dated June 30, 1997 in Docket No. ER97–3058–000;

3. Service Agreement for Firm Point-to-Point Transmission Service dated October 7, 1997 and accepted by Letter Order January 2, 1998 in Docket No. ER98–671–000.

The Company requests an effective date of the assignments of July 1, 2000.

Copies of the amended filing were served upon PPL EnergyPlus, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. West Georgia Generating Company L.P.

[Docket No. ER00–2966–001]

Take notice that on August 28, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing an amendment to its filing in the above-captioned docket. The amended filing consists of a confidential copy and redacted copies of a Power Purchase Agreement between West Georgia Generating Company L.P. and Municipal Electric Authority of Georgia.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. West Georgia Generating Company L.P.

[Docket No. ER00–2965–001]

Take notice that on August 28, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing an amendment to its filing in the above-captioned docket. The amended filing consists of a confidential copy and redacted copies of a Negotiated Contract for the Purchase of Firm Capacity and Energy between Cataula Generating Company L.P., a predecessor in interest to West Georgia Generating Company L.P., and Georgia Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. West Georgia Generating Company L.P.

[Docket No. ER00–2964–001]

Take notice that on August 28, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing an amendment to its filing in the above-captioned docket. The amended filing consists of a confidential copy and redacted copies of a Power Purchase Agreement between West Georgia Generating Company L.P. and Oglethorpe Power Corporation.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. West Georgia Generating Company L.P.

[Docket No. ER00–2962–001]

Take notice that on August 28, 2000, West Georgia Generating Company (West Georgia), an Exempt Wholesale Generator that owns and operates a 640 MW electric generation plant in Thomastown, Georgia, tendered for filing an amendment to its filing in the above-captioned docket. The amended filing consists of a confidential copy and redacted copies of a Negotiated Contract for the Purchase of firm Capacity and Energy between West Georgia Generating Company L.P. and Gulf Power Company.

West Georgia requests that the Agreement be permitted to become effective June 1, 2000.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER00–2621–001]

Take notice that on August 24, 2000, Energy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing a compliance Interconnection and Operating Agreement with Occidental Chemical Corporation in accordance with the Commission's order in Entergy Louisiana, Inc., 92 FERC ¶ 61,052 (2000).

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Power Exchange Corporation

[Docket No. ER00–2386–002]

Take notice that on August 25, 2000, the California Power Exchange Corporation (CalPX), on behalf of its

CalPX Trading Services Division (CTS), tendered a compliance filing to amend the July 18, 2000 filing in this proceeding. The August 25, 2000, filing does not propose any substantive changes in the CTS Rate Schedule but merely updates that Rate Schedule by integrating changes previously accepted by the Commission to be effective August 1, 2000.

Copies of the filing were served on the California Public Utilities Commission and the Official Service List in Docket No. ER00–2386–000. The filing is also posted on the CalPX website at *www.CalPX.com.*

Comment date: September 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket Nos. ER99–4470–002]

Take notice that on August 29, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing its refund report in compliance with the Commission's order of July 31, 2000, approving the Settlement in the above-referenced proceeding.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–23064 Filed 9–7–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1–003, et al.]

TransEnergie U.S., et. al.; Electric Rate and Corporate Regulation Filings

August 31, 2000.

Take notice that the following filings have been made with the Commission:

1. TransEnergie U.S. Ltd.

[Docket No. ER00–1–003]

Take notice that on August 23, 2000, TransEnergie U.S. Ltd., tendered for filing a report of its open season for the Cross Sound Cable Interconnector.

TransEnergie also asks that portions of the report be granted confidential treatment under Section 388.112 of the Commission's Regulations. These portions are the results of Tranche 1 of the open season.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southwest Power Pool

[Docket No. ER00–2713–001]

Take notice that on August 28, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing in compliance filing in response to the Commission's July 28, 2000 order in this proceeding.

SPP seeks an effective date of June 6, 2000, for the changes contained therein.

Copies of this filing were served on all affected state commissions, all SPP customers, and all parties included on the official service list established in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER00–2907–001]

Take notice that on August 28, 2000, Public Service Company of New Mexico (PNM) submitted for filing a response in compliance with the Federal Energy Regulatory Commission (FERC) August 14, 2000 letter conditionally accepting its June 20, 2000 filing in the docket, regarding two executed service agreements and an executed amendment to one of the agreements, with Texas New Mexico Power Company (TNMP). PNM has updated its June 20, 2000 filing to include the proper rate schedule designations for the service agreements and amendment, per requirements in Order No. 614, FERC Stats. & Regs. ¶31,096 (2000), and per FERC's August 14, 2000 letter. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to TNMP and to the New Mexico Public Regulation Commission.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER00–2976–001]

Take notice that on August 29, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Power Sales Agreement dated January 28, 1997, modified by way of a First Amendment to Power Sales Agreement dated February 10, 1999, entered into with Waverly Light and Power, pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requested and the Director, Division of Corporate Applications, approved a June 29, 2000 effective date for the Power Sales Agreement, as amended, subject to MidAmerican making a compliance filing to conform MidAmerican's previous filing in this matter dated June 28, 2000 to be consistent with the necessary filing rate schedule designations as required by Order 614, FERC Stats. & Regs. ¶ 31,096 (2000) and *Southwest Power Pool Inc.,* 92 FERC ¶ 61,109 (2000).

MidAmerican has served a copy of the compliance filing on Waverly Light and Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. PPL Montour, LLC

[Docket No. ER00–3028–001]

Take notice that on August 28, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3028–000 (Letter Order Issued July 28, 2000).

PPL Montour stated that it served a copy of its filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. PPL Montour, LLC

[Docket No. ER00–3029–001]

Take notice that on August 28, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3029–000 (Letter Order Issued July 28, 2000).

PPL Montour stated that it served a copy its filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PPl Montour, LLC

[Docket No. ER00–3030–001 and ER00–3034–001]

Take notice that on August 28, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3030–000 and ER00–3034–000 (Letter Order Issued July 28, 2000).

PPL Montour stated that it served a copy of its filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Montour, LLC

[Docket Nos. ER00–3031–001 and ER00–3036–001]

Take notice that on August 28, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3031–000 and ER00–3036–000 (Letter Order Issued July 28, 2000).

PPL Montour stated that it served a copy its filing upon each person designated on the official service list complied by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Montour, LLC

[Docket No. ER00–3032–000]

Take notice that on August 28, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3032–000 (Letter Order Issued July 28, 2000).

PPL Montour stated that it served a copy its filing upon each person designated on official service list complied by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL EnergyPlus, LLC

[Docket No. ER00–3033–001]

Take notice that on August 28, 2000, PPL EnergyPlus, LLC (PPL EnergyPlus), tendered for filing with the Federal Energy Regulatory Commission a compliance filing pursuant to the Commission's order in PPL Montour, LLC, Docket No. ER00–3033–000 (Letter Order Issued July 28, 2000).

PPL EnergyPlus stated that it served a copy its filing upon each person designated on the official service list complied by the Secretary in this proceeding.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–3540–000]

Take notice that on August 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Notice of Cancellation of Service Agreement No. 37 with Delmarva Power and Light Company, a customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply has requested a waiver of notice to allow the cancellation to be effective June 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER00–3542–000]

Take notice that on August 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing notice that effective December 15, 2000, Rate Schedule No. 87, effective December 15, 1995 and filed with the Federal Energy Regulatory Commission by Wisconsin Electric Power Company is to be canceled as requested by the customer the City of Kiel, Wisconsin (Kiel).

Copies of the filing have been served on Kiel, Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC (AE Supply)

[Docket No. ER00–3543–000]

Take notice that on August 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), tendered for filing a Service Agreement with The Potomac Edison Company d/b/a Allegheny Power in order for Allegheny Power to supply service to its Virginia retail customers.

AE Supply has requested a waiver of notice to make the Service Agreement effective August 1, 2000.

Copies of the filing have been provided to the customer and to the Virginia State Corporation Commission.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. West Texas Utilities Company

[Docket No. ER00–3243–001]

Take notice that on August 28, 2000, West Texas Utilities Company (WTU) filed six revised tariff sheets to its Wholesale Power Choice Tariff (WPC Tariff) to correct certain errors in the headers and pagination of the six WPC tariff sheets that WTU filed on July 24, 2000, in the above-captioned proceeding.

WTU continues to seek an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the amended filing have been served on the affected WPC Customers and on the Public Utility Commission of Texas.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER00–3079–001]

Take notice that on August 29, 2000, PacifiCorp tendered for filing in compliance with the Commission's conditional acceptance issued on August 18, 2000 under FERC Docket No. ER00–3079–000 and in accordance with

the Commission's Order No. 614, designations for revisions to Exhibits B, D, and H to the General Transfer Agreement between PacifiCorp and Bonneville Power Administration.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Mid-Continent Area Power Pool

[Docket No. ER00–3544–000]

Take notice that on August 28, 2000, Minnesota Power (MP) filed its tariff sheet that indicates Minnesota Power's open access transmission tariff incorporates Mid-Continent Area Power Pool's (MAPP's) revised Line Loading Relief Procedures, as discussed in *Mid-Continent Area Power Pool,* Docket Nos. ER99–2469–001, *et al.*

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER00–3545–000]

Take notice that on August 28, 2000, the New England Power Pool (NEPOOL) submitted: (1) the Sixty-Second Agreement Amending New England Power Pool Agreement, which implementes new procedures for the resolution of billing disputes within NEPOOL or between NEPOOL Participants and ISO New England Inc. (the ISO); and (2) the Sixty-Third Agreement Amending New England Power Pool Agreement which provides for enhanced notice requirements when a NEPOOL Participant defaults on its obligations to other NEPOOL Participants that are required to provide additional financial assurance under the Financial Assurance Policy for NEPOOL Members to limit their net charges due to NEPOOL and the ISO at any time to the amount of that financial assurance.

On October 27, 2000 effective date is requested for these Agreements.

NEPOOL states that copies of these materials were sent to the Participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Electric Power Company

[Docket No. ER00–3547–000]

Take notice that on August 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and The Legacy Energy Group (Legacy). The Transmission Service Agreements allow Legacy to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Copies of the filing have been served on Legacy and El Paso, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–3548–000]

Take notice that on August 28, 2000, Wisconsin Energy Corporation Operating Companies tendered for filing at Notice of Cancellation stating that effective the first day of September, 2000, Service Agreement Nos. 8, 18–21, and 33–37 under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1, are to be canceled.

Copies of the filing have been served on El Paso Merchant Energy, L.P., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER00–3549–000]

Take notice that on August 28, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Chevron Oronite Company, LLC (Chevron), a Letter Agreement for Distribution Service Charge between Entergy Services and Chevron, and a Generator Imbalance Agreement with Chevron.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Tampa Electric Company

[Docket No. ER00–3551–000]

Take notice that on August 29, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Cinergy Services, Inc. (Cinergy Services) for firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of August 25, 2000, for the tendered service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cinergy Services and the Florida Public Service Commission.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. NSTAR Services Company v. New England Power Pool, ISO New England, Inc., ISO New England, Inc., and ISO New England, Inc.

[Docket Nos. EL00–83–003, EL00–83–001, ER00–2811–003, ER00–2811–001, ER00–2937–000, EL00–62–000, and ER00–2052–000]

Take notice that on August 25, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to its Market Rules in response to requirements of the Commission's July 26, 2000 order in Docket Nos. EL00–83–000, EL00–2052–000. New England Power Pool, 92 FERC 61, 065 (2000). In accordance with the requirements of that order, NEPOOL has noted an effective date of July 26, 2000.

The NEPOOL Participants committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: September 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–23065 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Meeting on Wholesale Power Markets and Transmission Services in California

September 1, 2000.

On September 15, 2000, the Federal Energy Regulatory Commission is planning to convene a public meeting in San Diego, California to allow interested persons to give the Commission their views on recent events in California's wholesale markets. While the Commission is finalizing arrangements for a meeting on September 15th, the Commission may need to change the meeting to a different date within the week of September 11th. A further notice will be issued confirming the date. The meeting is scheduled to begin at 9 a.m., at the San Diego Concourse, the Copper Room, 202 C Street, San Diego, California 92101. All interested persons may attend the meeting. The meeting will be transcribed. A separate notice will be issued before the meeting, setting forth an agenda and identifying the panels of participants. Additional information may be obtained from the Office of External Affairs at (202) 208–0870. Information also may be obtained from the Commission's web page at *www.ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23056 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change in Date for Public Meeting on Wholesale Power Markets and Transmission Services in California

September 5, 2000.

The Commission is changing the date for the public meeting it is convening in San Diego. The public meeting will now be held on September 12, 2000. As explained in the Commission's September 1, 2000 notice, the public meeting in San Diego, California will allow interested persons to give the Commission their views on recent events in California's wholesale markets. The meeting is scheduled to begin at 9 a.m., at the San Diego Concourse, the Copper Room, 202 C Street, San Diego, California 92101. All interested persons may attend the meeting. The meeting will be transcribed. A separate notice will be issued before the meeting, setting forth an agenda and identifying the panels of participants. Additional information may be obtained from the Office of External Affairs at (202) 208–0870. Information also may be obtained from the Commission's web page at *www.ferc.fed.us.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–23199 Filed 9–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6866–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; 2000 Meat Products Industry Surveys (EPA ICR 1961.01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''2000 Meat Products Industry Surveys'' (EPA ICR No. 1961.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instruments.

DATES: Comments must be submitted on or before October 10, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1961.01, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1961.01. For technical questions about the ICR contact Samantha Lewis at (202) 260–7149.

SUPPLEMENTARY INFORMATION: *Title:* 2000 Meat Products Industry Surveys (EPA ICR No.1961.01). This is a new collection.

Abstract: The 2000 Meat Products Industry Surveys will collect, from industry, the technical and economic information required by EPA to develop effluent limitations guidelines and pretreatment standards. The Surveys cover slaughtering, further processing, and rendering of animals classified as red meat and poultry.

EPA will issue these surveys under authority of section 308 of the Clean Water Act, 33 U.S.C. 1318, which authorizes EPA to require the owner or operator of a point source to submit certain information that EPA needs to develop effluent regulations. The Surveys will provide the technical and economic information required to effectively evaluate pollution control technologies and the economic achievability of those technologies. Respondents will have the right to claim information as confidential. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on May 1, 2000 (65 FR 25325). Four sets of comments were received.

Burden Statement: The data collection consists of 3 elements: The Detailed Survey, the Screener Survey, and the 5-day analytical data requests for 20 facilities. The total nationwide public reporting and record keeping burden for this one-time, information collection is estimated to be 14,900 hours (30 hours per response for the Detailed Survey, 1 hour for the Screener Survey, and 138 hours for the analytical data). A facility receiving a request for analytical data is likely to also receive a survey. 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; to 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; to adjust the existing ways to comply with any

previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

EPA has identified approximately 8,000 facilities as potentially in the Meat Products Industry. EPA will send the Detailed Survey to approximately 350 sites and will send the Screener Survey to approximately 1,650 sites. The survey recipients will be selected using engineering judgement and statistical sampling methods. The estimated cost to complete the Detailed Survey is approximately $2,000 per site. The estimated cost for the screener survey is approximately $70 per site. For approximately 20 facilities, EPA will request five days of influent and effluent analytical data to be collected and sent to EPA labs for analysis. The estimated cost for each of these 20 sites is $9,500. The estimated total cost for the information collection burden is $1.03 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1961.01 in any inquiry.

Dated: August 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–23147 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6610–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities. General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed August 28, 2000 through September 1, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000301, DRAFT EIS, BLM, CA, Mesquite Mine Expansion Project, To Expand the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits and Reclamation Plan Approval, Imperial County, CA, Due: October 27, 2000, Contact: Kevin Marty (909) 697–5200.

EIS No. 000302, FINAL EIS, BLM, NM, Farmington Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Farmington Riparian and Aquatic Habitat Management Plan, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM, Due: October 10, 2000, Contact: Robert Moore (505) 599–6311.

EIS No. 000303, FINAL EIS, BLM, NM, Las Cruces Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Mimbres Resource Management Plan, Dona Ana, Luna, Grant and Hidalgo Counties, NM, Due: October 10, 2000, Contact: Bill Merhege (505) 525–4369.

EIS No. 000304, FINAL EIS, BLM, NM, Albuquerque Field Office Riparian and Aquatic Habitats Management, To Restore and Protect, Rio Puerco Resource Management Plan Amendment (RMPA), Cibola, Sandoval, McKinley, Rio Arriba, Bernalillo, Valencia and Santa Fe Counties, NM, Due: October 10, 2000, Contact: Jim Silva (505) 761–8901.

EIS No. 000305, FINAL EIS, BLM, NM, Taos Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Miquel, Santa Fe, Taos and Unison Counties, NM, Due: October 10, 2000, Contact: Pam Herrera (505) 751–4705.

EIS No. 000306, DRAFT EIS, FHW, SC, Dave Lyle Boulevard Extension, New Location from the S.C. Route 161/Dave Lyle Boulevard Intersection in York County To S.C. Route 75, in the vicinity of the U.S. Route 521/S.C., York County Metropolitan Road Corridor Project, Funding, York and Lancaster Counties, SC, Due: October 23, 2000, Contact: Kenneth R. Myers, P.E. (803) 253–3881.

EIS No. 000307, DRAFT EIS, FRC, AL, FL, Buccaneer Natural Gas Pipeline Project, Construction and Operations, To Deliver Natural Gas for Electric Power Generation, Mobile County, AL and Pasco, Polk, Hardee, Lake and Osceola Counties, FL, Due: October 24, 2000, Contact: Paul McKee (202) 208–1611.

EIS No. 000308, DRAFT EIS, FRC, AL, FL, MS, Gulfstream Natural Gas System Project, Construction and Operation, To Provide Natural Gas Transportation Service, AL, MS and FL, Due: October 23, 2000, Contact: Paul McKee (202) 208–1611.

EIS No. 000309, REVISED DRAFT EIS, NPS, CA, Mojave National Preserve General Management Plan, Revised and New Alternatives the Proposed Management Approach and Two Alternatives for the Management of the 1.6 Million-Acre, Implementation, San Bernardio County, CA, Due: December 08, 2000, Contact: Alan Schmierer (415) 427–1441.

EIS No. 000310, DRAFT SUPPLEMENT, NPS, CA, NV, CA, NV, Death Valley National Park General Management Plan, Proposed Management Approach and Two Alternatives for the Management of the 3.3 Million Acres, Implementation, Mojave Desert, Inyo and San Bernardino Counties, CA and Nye and Esmeralda Counties, NV, Due: December 08, 2000, Contact: Alan Schmierer (415) 427–1441.

EIS No. 000311, DRAFT EIS, FTA, HI, Oahu Primary Corridor Transportation Project, Improvements from Kapolei in the west to the University of Hawaii-Manoa and Waikiki in the east, Major Investment Study, In the City and County of Honolulu, HI, Due: November 06, 2000, Contact: Donna Turchie (415) 744–3115.

EIS No. 000312, DRAFT EIS, COE, NB, Western Sarpy/Clear Creek Flood Reduction Study Including Environmental Restoration Component, Lower Platte River and Tributaries, Saunders and Sarpy Counties, NB, Due: October 23, 2000, Contact: Nelson S. Carpenter (402) 221–4450.

EIS No. 000313, FINAL EIS, AFS, UT, Trout Slope East Timber Project, Timber Harvest and Associated Activities, Implementation, Vernal Ranger District, Ashley National Forest, Uintah County, UT, Due: October 10, 2000, Contact: Laura Jo West (435) 781–5167.

EIS No. 000314, FINAL SUPPLEMENT, UAF, TX, Programmatic EIS—Kelly Air Force Base (AFB) Disposal and Reuse, New and Updated Information, Joint Military and Civil Use of the Runway and other Airfield Facilities, Joint Use Agreement, Bexar County, San Antonio, TX, Due: October 10, 2000, Contact: Jonathan D. Farthing (210) 536–3787.

Amended Notices

EIS No. 000259, DRAFT EIS, SFW, CA, Bolsa Chica Lowlands Restoration Project, Creation of Wetland Habitat Areas, Approval and Issuance of USCOE Section 404 and USCGD Bridge Permits, Orange County, CA, Due: October 16, 2000, Contact: Jack Fancher (760) 431–9440. USFWS and USCOE are Joint Lead Agencies for the above EIS. Published FR–07–28–00 Review Period Reopened, so that Errata : Section 5, 6, and 7 can be reviewed. From 09–11–2000 to 10–16–2000.

EIS No. 000294, FINAL SUPPLEMENT, COE, MO, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Flood Control, National Economic Development (NED) New Madrid, Mississippi and Scott Counties, MO, Due: October 10, 2000, Contact: John Rumancik (901) 544–3975. Revision of FR notice published on 09/01/2000: CEQ Comment Date corrected from 10/02/2000 to 10/10/2000. Also distribution was not completed until the week of 09/01/2000.

Dated: September 5, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–23153 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6867–6]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of the United Egg Producers Project XL Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XL Final Project Agreement (FPA) for the United Egg Producers (UEP).

DATES: The period for submission of comments on the draft FPA ends on September 22, 2000.

ADDRESSES: All comments on the draft FPA should be sent to Ms. Lisa Reiter, US EPA, 1200 Pennsylvania Avenue, NW (1802), Washington, D.C. 20460. Comments may also be faxed to Ms. Reiter at (202) 260–3125. Comments will also be received via electronic mail sent to Ms. Reiter at *reiter.lisa@epa.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft FPA, contact Ms. Lisa Reiter, US EPA, 1200 Pennsylvania Avenue, NW (1802), Washington, D.C. 20460 or Mr. James Horne, US EPA, 1200 Pennsylvania Avenue, NW (4201), Washington, D.C. 20460. The FPA and related documents are also available via the Internet at the following location: ''http://www.epa.gov/ProjectXL''. Questions to EPA regarding the documents can be directed to Ms. Reiter at (202) 260–9041 or Mr. Horne at (202) 260–5802. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at ''http://www.epa.gov/ProjectXL''.

SUPPLEMENTARY INFORMATION: The FPA is a voluntary agreement developed by UEP, EPA, various State water officials, environmental groups, and other stakeholders. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. If implemented, the draft FPA will offer environmental and resource benefits to States, EPA, the public, and egg producers. This project includes a program whereby egg-producing facilities could qualify for coverage under general National Pollutant Discharge Elimination System (NPDES) permits issued by EPA or states and achieve ''superior environmental performance'' by implementing an environmental management system (EMS), which would address a range of environmental problems that would not normally be addressed through NPDES permits alone. These other issues include odor, rodent control, pest control, preventative maintenance, emergency response and others. In order to be covered under a general permit instead of an individual permit, each facility would also need to be implementing an EMS to address these issues and have passed an audit by an independent third party to confirm that the EMS was in place and functioning properly. Facilities would communicate with the local community as the EMS was developed and implemented. Information on the results of the third-party audits would also be available to the local community and to regulatory agencies when the facility submitted a Notice of Intent to be covered under a general permit. Regular followup audits would also take place and the results of these audits would be publicly available. If the facility failed to remain in compliance with the general permit or failed to adequately implement its EMS, regulatory agencies could require the facility to obtain an individual permit. Finally, UEP would significantly expand its industry outreach and education program in order to help ensure that users of manure generated by egg producers was properly applied and managed, including help to users on how to develop Comprehensive Nutrient Management Plans over time.

Dated: September 5, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–23237 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6866–6]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the Project XL Draft Final Project Agreement: National Aeronautics and Space Administration (NASA) White Sands Test Facility (WSTF).

SUMMARY: EPA is requesting comments on a draft Project XL Final Project Agreement (FPA) for the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WSTF). The FPA is a voluntary agreement developed collaboratively by NASA WSTF, the New Mexico Environmental Department (NMED) and the United States Environmental Protection Agency (US EPA). Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements, policies, procedures and guidance on the condition that they produce greater environmental benefits.

In this XL pilot project, NASA WSTF proposes to implement a regulatory reporting and information system that will electronically provide compliance reports and permit information required by EPA to the State of New Mexico Environmental Department (NMED). The system will give NMED and EPA real-time access to additional environmental data to include, regulatory reports, historical site information, database archives, Geographic Information Systems (GIS) reports, groundwater database archives, cross media compliance information and graphical interpretations of site information. The internet based system will include an extensive public access area to encourage public and stakeholder participation with the facility's environmental activities. The public access section of the web site will provide information on current environmental conditions and projects, and communication regarding recycling programs, waste minimization activities, community right to know issues, ISO 14001 certification efforts and NEPA projects.

DATES: The period for submission of comments ends on September 22, 2000.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: John DuPree USEPA Office of Policy, Economics and Innovation (M/C 1802), 1200 Pennsylvania Avenue, Washington, DC 20460. Comments may be faxed to Mr. DuPree at 202–260–3125.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact John DuPree, 1200 Pennsylvania Avenue M/C (1802) Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* In addition, the draft FPA is available at the NASA WSTF, P.O. Box 20, Las Cruces, NM 88004. Questions to EPA regarding the documents can be directed to John DuPree at (202) 260–4468 or Adele Cardenas at 214–665–7210. Questions to NASA WSTF regarding this project can be directed to Mr. David Amidei, NASA WSTF, P.O. Box 20, Las Cruces, NM 88004, Mr. Amidei's telephone number is (505) 524–5024. For information on all other aspects of

the XL Program contact Nancy Birnbaum at the following address: Office of Policy Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, Room M3802 (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, are available via the Internet at http://www.epa.gov/ProjectXL.

Dated: August 31, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–23152 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6867–1]

Regulatory Reinvention (XL) Pilot Projects; Project XL Draft Final Project Agreement: Waste Management, Inc. Landfill Bioreactor Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of USA Waste of Virginia, Inc., and King George Landfills, Inc., wholly owned subsidiaries of Waste Management, Inc. (hereinafter Waste Management) Bioreactor Systems Project XL Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XL Final Project Agreement (FPA) for Waste Management.

DATES: The period for submission of comments on the draft FPA ends on September 22, 2000.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Janet Murray, U.S. EPA, 1200 Pennsylvania Avenue, NW (m/c1802), Washington, DC 20460. Comments may also be faxed to Ms. Murray at (202) 260–3125. Comments will also be received via electronic mail sent to: *Murray.Janet@epa.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Chris Menen, USEPA Region 3 (m/c 3EIOO) 1650 Arch St. Philadelphia, PA 19103 or Janet Murray, U.S.EPA, 1200 Pennsylvania Ave, NW. (m/c 1802), Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: *www.epa.gov/projectxl.* In addition, project documents are located at EPA Region 3, 1650 Arch St. Philadelphia, PA 19103. Questions to EPA regarding the documents can be directed to Chris Menen at (215) 814–2786 or Janet Murray at (202) 260–7570. Documents pertaining to the project will be maintained at the Virginia Department of Environmental Quality, 629 Main Street, Richmond, VA 22129 c/o Paul Farrell, (804) 698–4214. Documents will also be maintained at public libraries in King George County and Amelia County. The address for the library in Amelia County is: The James Hammer Memorial Library, 16351 Dunn Street, Amelia, Virginia 23002, and the file is entitled ''Amelia County Landfill, Maplewood Site, Project XL.'' The address for the library in King George County is: L.F. Smoot Lewis Memorial, 9533 Kings Highway, King George, Virginia 22485, and the file will be entitled ''King George County Landfill Project XL.'' Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the Internet at *www.epa.gov/projectxl.*

SUPPLEMENTARY INFORMATION: The FPA is a voluntary agreement developed by Waste Management, the Commonwealth of Virginia, and USEPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. If implemented, the draft FPA will allow Waste Management to implement two slightly different waste treatment systems at two of its Virginia Landfills. Leachate recirculation would be implemented at its Maplewood Recycling and Waste Disposal Facility, owned and operated by Waste Management, Inc. subsidiary USA Waste of Virginia, Inc. Bioreactor operations would be implemented at the King George County Landfill and Recycling Facility, operated by Waste Management, Inc., subsidiary King George Landfills , Inc. Under the project, Waste Management is requesting flexibility from the regulatory requirement that restricts application of bulk liquids in municipal solid waste landfills (40 CFR 258.28) as well as similar flexibility under part V of Virginia Solid Waste Management Regulations. EPA expects to shortly publish a document in the **Federal Register** proposing and seeking public comment on a site-specific rule to modify the requirements of 40 CFR 258.28 for this project.

Dated: September 1, 2000.

Christopher Knopes,

Associate Director, Office of Environmental Policy Innovation.

[FR Doc. 00–23148 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6867–2]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Draft Monitoring Plan Agreement for the Fort Worth, Texas XL Project.

SUMMARY: EPA is today requesting comments on a draft Monitoring Plan Agreement for Phase 1 of the Fort Worth XL Project.

DATES: The period for submission of comments on the draft Monitoring Plan Agreement ends on September 22, 2000.

ADDRESSES: All comments on the draft Monitoring Plan Agreement should be sent to: David Beck, U.S. EPA, Mail Drop 10, Research Triangle Park, NC 27711. Comments also may be faxed to David Beck at 919–541–2464 or sent via electronic mail to: beck.david@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Monitoring Plan Agreement, contact: Adele Cardenas of EPA Region VI at 214–665–7210 or electronically at *cardenas.adele@epa.gov* or David Beck at 919–541–5421 or electronically at *beck.david@epa.gov*. In addition, project documents are located at EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202. Questions to EPA regarding the documents can be directed to Adele Cardenas at 214–665–7210 or David Beck at 919–541–5421. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, application information, and descriptions of existing XL projects and proposals, is available via the internet at ''http://www.epa.gov/ProjectXL.''

SUPPLEMENTARY INFORMATION: Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives

regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. Under the Fort Worth XL project, the City of Fort Worth proposes to demonstrate that use of an alternative demolition method on abandoned buildings containing asbestos will protect the public from asbestos emissions as well as the demolition method specified in an asbestos emission standard issued by EPA under section 112 of the Clean Air Act. Moreover, the City expects that their lower cost demolition method will allow them to accelerate demolitions, thereby eliminating sites potentially harboring illegal activities and reducing safety/health hazards associated with the abandoned structures. To demonstrate the effectiveness of their method, the City will monitor asbestos emissions during the demolition of a single structure in Phase 1 of the project and, if Phase 1 monitoring results indicate the Fort Worth method is equivalent to the regulatory method, two additional structures during Phase 2. The project entails a set number of Fort Worth method demolitions under a third and final phase of the project, provided the results of Phase 2 continue to show equivalency.

The draft Monitoring Plan Agreement is a voluntary agreement developed with input from the City of Fort Worth, the Texas Department of Health, and EPA which lays out the protocol for capturing and analyzing asbestos emissions for Phase 1 of the project. The agreement also spells out the criteria by which the Fort Worth method can be shown equivalent to the Federal method, for the purposes of proceeding to Phase 2 of the project. The City does not require regulatory relief to perform the Phase 1 demolition, since the structure to be demolished is of a type that can be demolished under the asbestos standard using the Fort Worth method. To conduct phases 2 and 3 of the project, Fort Worth will need regulatory relief (specifically from 40 CFR part 61 subpart M—National Emission Standard for Asbestos). The details of these phases will be negotiated with stakeholders and set forth in a Final Project Agreement (FPA). A draft of the FPA will be available for public comment through a future **Federal Register** notice.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–23149 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00560A; FRL–6593–6]

Pesticides; Science Policy on Use of Data on Cholinesterase Inhibition in Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled ''The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides.'' This notice is one in a series concerning science policy documents related to implementation of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act.

FOR FURTHER INFORMATION CONTACT: Dr. Penelope A. Fenner-Crisp, Environmental Protection Agency (7501C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 605–0654; fax number: (703) 308–4776; e-mail address: fenner-crisp.penelope@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-Demand*. You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6065 for the document entitled ''Office of Pesticide Programs' Science Policy on the Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides.'' Select item 6066 for the document entitled ''Responses to Public Comments on the Office of Pesticide Programs' 1997 Science Policy: The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00560A which includes a document summarizing an objection received during internal EPA review and EPA response to the objection. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any

electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information About the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency has sought independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, as directed by Vice President Albert Gore, EPA worked with the U.S. Department of Agriculture (USDA) and a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FQPA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC met from May 27, 1998 through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC towards the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities. The CARAT held its first meeting on June 23, 2000. As a result of the TRAC process, the Agency decided that the FQPA implementation process and related policies would benefit from notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA described its intended approach. Since then, EPA has been issuing a series of draft and revised documents concerning the nine science policies. This notice announces the availability of the revised version of the science policy document entitled ''The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides.''

III. Summary of Revised Science Policy Guidance Document

In 1997, EPA's Office of Pesticide Programs presented a science policy document entitled ''The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides'' to the FIFRA Scientific Advisory Panel for review and comment. The 1997 science policy document described the approaches OPP would employ in assessing the potential for human health hazard from the cholinergic effects on nervous system function following exposure to cholinesterase-inhibiting pesticides.

In 1998, as part of its TRAC review of science policy issues, OPP published a draft version of the 1997 TRAC science policy document entitled ''Office of Pesticide Programs' Science Policy on the Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides'' on November 5, 1998 (63 FR 59780) (FRL–6042–3) and comments were filed under docket control number OPP–00560. Many persons also submitted comments on the 1997 policy document under docket control number OPP–00480 relative to the 1997 SAP meeting (62 FR 19572, April 22, 1997) (FRL–5714–2) and under docket control number OPP–00557 relative to the TRAC process. All of the comments and recommendations have been reviewed by OPP and incorporated into the revised science policy document, as appropriate.

As did the 1997 policy, this revised science policy document emphasizes the weighing of all relevant evidence when selecting endpoints for the hazard assessment of anticholinesterase pesticides. This ''weight-of-the-evidence'' review, conducted on a case-by-case, chemical-by-chemical basis, is accomplished by performing an integrative analysis after assessing all the individual lines of evidence (including all available data on cholinesterase inhibition in all compartments—central nervous system, peripheral nervous system, red blood cells, and plasma—as well as data on clinical signs, symptoms and other physiological or behavioral effects). Weighing of the evidence must include considerations of many factors, including the adequacy of study protocols; quality of data; number of studies on each endpoint; dose-dependency of responses; time course and duration of effects; and similarities or differences of responses observed in all the species, strains, and sexes tested for each duration and route of exposure evaluated.

In a weight-of-the-evidence assessment of cholinesterase-inhibiting substances, acetylcholinesterase inhibition in the nervous system is viewed as a key event in the mechanism of toxicity of these compounds and an important critical effect to consider in the hazard assessment. Evaluations of the cholinergic effects (i.e., physiological and behavioral changes and measures of cholinesterase inhibition in the central and peripheral nervous systems) caused by exposure to the cholinesterase-inhibiting organophosphorous and carbamate pesticides provide direct evidence for characterizing potential human health hazard. Because of likely differences in both the chemicals' and the cholinesterases' pharmacodynamic properties, measures of cholinesterase inhibition in both the central and peripheral nervous systems are important for a thorough evaluation of

potential hazard. However, direct measurement of cholinesterase activity in peripheral nervous system tissues is rarely available at the present time. When these data are not available, as a matter of prudent science policy protective of human health, EPA will treat cholinesterase inhibition in the blood as a surrogate measure for the peripheral nervous system in animals and for both the peripheral and central nervous systems in humans. Information from blood cholinesterase inhibition data is considered to provide important insights into potential hazard.

Red blood cell (RBC) measures of acetylcholinesterase (AChE) are generally preferred over plasma measures of cholinesterase activity because data on red blood cells may provide a better representation of the inhibition of the neural target enzyme, acetylcholinesterase. OPP, however, may use plasma cholinesterase inhibition data under certain circumstances, such as if red blood cell data are insufficient, of poor quality, or unavailable; if there is a lack of dose-dependency for the red blood cell acetylcholinesterase inhibition; or, if the dose responses for inhibition of plasma cholinesterase more closely approximate those for AChE inhibition in the nervous system than do the dose responses for RBC acetylcholinesterase inhibition.

It should be noted that the present policy provides guidance only on how to deal with data as they relate to the cholinergic endpoints associated with nervous system function following exposure to organophosphorous and carbamate pesticides. This scope is consistent with all earlier descriptions of Agency assessment approaches as well as that of other organizations with regard to the evaluation of cholinesterase-inhibiting substances (e.g., WHO JMPR (1998), DPR-CalEPA (1997) and other national authorities). When applying the weight-of-the-evidence approach for selecting critical effect(s) for derivation of a reference dose (RfD) or concentration (RfC), however, the entire toxicological data base on a pesticide must be evaluated (i.e., there also must be consideration of endpoints not related to the cholinergic consequences of anticholinesterase activity, for instance, liver or developmental toxicity or carcinogenicity). It is possible that, for one or more of the exposure scenarios being evaluated, the non-cholinergic effects will be identified as critical or co-critical, and they may become a more appropriate basis for deriving RfDs or RfCs.

Finally, OPP policy documents are meant to be ''living documents,'' that is, they are open to periodic updating and revision to reflect advances in the science. Thus, this policy, too, will be updated to incorporate important new scientific knowledge as it becomes available. For example, the routine availability of data on acetylcholinesterase activity in the peripheral nervous system may allow for refinements in the hazard assessment approach for anticholinesterase chemicals. Also, as knowledge increases about the potential roles of the different cholinesterases in the developing organism, particularly as they impact the development of the nervous system, it may allow for refinements in evaluating the potential differential sensitivity and susceptibility of the young versus adults. In fact, a substantial research effort has been, and continues to be, made to determine what roles acetylcholine-, butyrylcholine-, and other esterases may play in the development of the nervous system and in cell growth, proliferation, and death in other tissues. OPP encourages further discussion of the possible implications of the research findings, both for future research planning and for the Agency's regulation of cholinesterase-inhibiting pesticides.

IV. Summary of Comments and Responses

In the public comments referred to under Unit III., some commenters addressed the general policy and its rationale as well as all of the specific questions posed, while other reviewers provided detailed comments only on certain aspects of the policy. A listing of the names and affiliations of those who submitted comments is provided at the end of the document entitled ''Responses to Public Comments on the Office of Pesticide Programs' 1997 Science Policy: The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorus and Carbamate Pesticides.'' This document contains a summary of the most significant revisions to the 1997 science policy document, followed by responses to comments.

In the draft science policy document, the Agency requested comment on ten questions to help focus public commment. In order to organize the responses to these questions in the response to comments document, the ten specific questions have been combined into six somewhat broader topic areas:

1. General weight-of-the-evidence issues related to the use of blood and brain measures as critical effects, differences between plasma and RBC measures and their use, and the weight-of-the-evidence approach (Questions 1, 2, and 9);
2. Peripheral nervous system measures (Questions 3 and 4);
3. Comparative measures in the young and adults (Questions 5 and 6);
4. Additional neurochemical measures (Questions 7 and 8);
5. Other comments.
6. Editorial comments on the science policy document (Question 10).

V. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 29, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–22820 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6866–8]

Proposed Administrative Cashout ''Ability to Pay'' Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Powell Road Landfill, Dayton, Montgomery County, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive

Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Powell Road Landfill site in Montgomery County, Ohio, with Central State University. The settlement requires Central State University to pay $1,000 to the Hazardous Substance Superfund.

The total cost of the cleanup is $26,925,537. This includes $4,735,2237, which represents Waste Management, Inc.'s past costs, including EPA oversight through December 31, 1996, and estimated future costs, including future oversight, of $22,940,300. EPA reduced the estimated future cost figure by $750,000 to account for certain generators who are insolvent or defunct. U.S. EPA's consultant, Industrial Economics, Inc., determined that based on the financial records supplied by Central State, Central State had no currently available resources to contribute to the cost of clean-up. Accordingly, U.S. EPA concluded that a payment of $1,000 was sufficient to resolve Central State's CERCLA liability. The financial analysis of U.S. EPA's consultant is attached to the Administrative Order on Consent as Attachment A. In exchange for Central State University's payment, the United States covenants not to sue or take administrative action pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, Central State University will be entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604 and at the Dayton & Montgomery County Public Library, Huber Heights Branch, 6160 Chambersburg Road, Huber Heights, Ohio 45424.

DATES: Comments must be submitted on or before October 10, 2000.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6670. Comments should reference the Powell Road Landfill site, Dayton, Montgomery County, Ohio, and EPA Docket No. V–W–00–C–589, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6670.

SUPPLEMENTARY INFORMATION: None.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: August 28, 2000.

William E. Muno,

Director, Superfund Division, 052G.

[FR Doc. 00–23150 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 00–248]

Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission provides guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier that may receive federal universal service support.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Declaratory Ruling in CC Docket No. 96–45 released on August 10, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Declaratory Ruling, we provide guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, (the Act) requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier (ETC) that may receive federal universal service support. We believe the guidance provided in this Declaratory Ruling is necessary to remove substantial uncertainty regarding the interpretation of section 214(e)(1) in pending state commission and judicial proceedings. We believe the guidance provided in this Declaratory Ruling will assist state commissions in acting expeditiously to fulfill their obligations under section 214(e) to designate competitive carriers as eligible for federal universal service support.

2. We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253(a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress. We believe that the guidance provided in this Declaratory Ruling will further the goals of the Act by ensuring that new entrants have a fair opportunity to provide service to consumers living in high-cost areas.

3. We note that Western Wireless has raised similar issues in its petition for preemption of a decision of the South Dakota Public Utilities Commission (South Dakota PUC). In its petition, Western Wireless asks the Commission to preempt, under section 253 and as inconsistent with the Act, the South Dakota PUC's requirement that, pursuant to section 214(e), a carrier may not receive designation as an ETC unless it is providing service throughout the service area. In light of the recent South Dakota Circuit Court decision overturning the South Dakota PUC's decision and granting Western Wireless ETC status in each exchange served by non-rural telephone companies in South Dakota, we believe that it is unnecessary to act on the Western Wireless petition at this time. In doing so, we note that section 253(d) requires the Commission to preempt state action only ''to the extent *necessary* to correct such violation or inconsistency.'' We acknowledge, however, that the *South Dakota Circuit Court Order* has been automatically stayed with the filing of the South Dakota PUC's notice of appeal to the Supreme Court of South Dakota. We therefore place Western Wireless' petition for preemption of the South Dakota PUC Order in abeyance pending final resolution of this appeal. The Commission will make a determination at that time as to whether it is necessary to proceed consistent with the guidance provided in this Declaratory Ruling.

I. Discussion

A. Section 253(a) Analysis

1. Discussion

4. We find that requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the new entrant to provide intrastate or interstate telecommunications service, in violation of section 253(a).

5. *Legal Requirement.* As an initial matter, we find that the requirement that a new entrant must provide service throughout its service area as a prerequisite to designation as an ETC under section 214(e) constitutes a state ''legal requirement'' under section 253(a). We have previously concluded that Congress intended the phrase, ''[s]tate or local statute or regulation, or other State or local requirement'' in section 253(a), to be interpreted broadly. The resolution of a carrier's request for designation as an ETC by a state commission is legally binding on the carrier and may prohibit the carrier from receiving federal universal service support. We find therefore that any such requirement constitutes a ''legal requirement'' under section 253(a).

6. *Prohibiting the Provision of Telecommunications Service.* We find that an interpretation of section 214(e) requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service. A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

7. No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

8. In addition, we find such an interpretation of section 214(e)(1) to be contrary to the meaning of that provision. Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall ''offer'' and advertise its services. The language of the statute does not require the actual provision of service prior to designation. We believe that this interpretation is consistent with the underlying congressional goal of promoting competition and access to telecommunications services in high-cost areas. In addition, this interpretation is consistent with the Commission's conclusion that a carrier must meet the section 214(e) criteria as a condition of its being designated an eligible carrier ''and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support.''

9. In addition, we note that ETC designation only allows the carrier to become *eligible* for federal universal service support. Support will be provided to the carrier only upon the provision of the supported services to consumers. We note that ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service. We also note that the state commission may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria.

10. In addition, we believe the fact that a carrier may already be providing service within the state prior to designation is not conclusive of whether the carrier can reasonably be expected to provide service throughout the service area, particularly in high-cost areas, prior to designation. While a requirement that a carrier be providing service throughout the service area may not affect the provision of service in lower-cost areas, it is likely to have the effect of prohibiting the ability of carriers without eligibility for support to provide service in high-cost areas.

11. *Gaps in Coverage.* We find the requirement that a carrier provide service to every potential customer throughout the service area before receiving ETC designation has the effect of prohibiting the provision of service in high-cost areas. As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer. We believe the ETC requirements should be no different for carriers that are not incumbent LECs. A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC. Thus, we find that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.

12. *State Authority.* Finally, although Congress granted to state commissions, under section 214(e)(2), the primary authority to make ETC designations, we do not agree that this authority is without any limitation. While state

commissions clearly have the authority to deny requests for ETC designation without running afoul of section 253, the denials must be based on the application of competitively neutral criteria that are not so onerous as to effectively preclude a prospective entrant from providing service. We believe that this is consistent with sections 214(e), 253, and 254, as well as the decision of the United States Court of Appeals for the Fifth Circuit in *Texas Office of Public Utility Counsel* v. *FCC.* We reiterate, however, that the state commissions are primarily responsible for making ETC designations. Nothing in this Declaratory Ruling is intended to undermine that responsibility. In fact, it is our expectation that the guidance provided in this Declaratory Ruling will enable state commissions to move expeditiously, in a pro-competitive manner, on many pending ETC designation requests.

B. Section 253(b) Analysis

1. Discussion

13. We find that a requirement to provide the supported services throughout the service area prior to designation as an ETC does not fall within the ''safe harbor'' provisions of section 253(b). To the contrary, we find that this requirement is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service. We therefore find that a requirement that obligates new entrants to provide supported services throughout the service area prior to designation as an ETC is subject to our preemption authority under section 253(d).

14. *Competitive Neutrality.* We find that the requirement to provide service prior to designation as an ETC is not competitively neutral. We believe this finding is consistent with the Commission's determination in the *Universal Service Order,* 62 FR 32862 (June 17, 1997), that ''[c]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.'' At the outset, we believe that, to meet the competitive neutrality requirement in non-rural telephone company service areas, the procedure for designating carriers as ETCs should be functionally equivalent for incumbents and new entrants. As discussed above, requiring the actual provision of supported services throughout the service area prior to ETC designation unfairly skews the universal service support mechanism in favor of the incumbent LEC. As a practical matter, the carrier most likely to be providing all the supported services throughout the requested designation area before ETC designation is the incumbent LEC. Without the assurance of eligibility for universal service funding, it is unlikely that any non-incumbent LEC will be able to make the necessary investments to provide service in high-cost areas.

15. We are not persuaded that such a requirement is competitively neutral merely because the requirement to provide service prior to ETC designation applies equally to both new entrants and incumbent LECs. We recently concluded that the proper inquiry is whether the *effect* of the legal requirement, rather than the method imposed, is competitively neutral. As discussed above, we find that the result of such a requirement is to favor incumbent LECs over new entrants. Unlike a new entrant, the incumbent LEC is already providing service and therefore bears no additional burden from a requirement that it provide service prior to designation as an ETC. We therefore find that requiring the provision of supported services throughout the service area prior to ETC designation has the effect of uniquely disadvantaging new entrants in violation of section 253(b)'s requirement of competitive neutrality.

16. *Consistent with Section 254 and Necessary to Preserve and Advance Universal Service.* We find that the requirement to provide service prior to designation as an ETC is not consistent with section 254 or ''necessary to preserve and advance universal service.'' To the contrary, we find that such a requirement has the effect of prohibiting the provision of service in high-cost areas. As discussed above, this requirement clearly has a disparate impact on new entrants, in violation of the competitive neutrality and nondiscriminatory principles embodied in section 254. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. If new entrants are not provided with the same opportunity to receive universal service support as the incumbent LEC, such carriers will be discouraged from providing service and competition in high-cost areas. Consequently, under an interpretation of section 214(e) that requires new entrants to provide service throughout the service area prior to designation as an ETC, the benefits that may otherwise occur as a result of access to affordable telecommunications services will not be available to consumers in high-cost areas. We believe such a result is inconsistent with the underlying universal service principles set forth in section 254(b) that are designed to preserve and advance universal service by promoting access to telecommunications services in high-cost areas.

17. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: a description of the proposed service technology, as supported by appropriate submissions; a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; a description of the extent to which the carrier has entered into interconnection and resale agreements; or, a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services. We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

C. Federal Preemption Authority

1. Discussion

18. We find an interpretation of section 214(e)(1) that requires a new entrant to provide service throughout the service area prior to designation as an ETC to be fundamentally inconsistent with the universal service provisions in the 1996 Act. Specifically, we find such a requirement to be inconsistent with the meaning of section 214(e)(1), Congress' universal service objectives as outlined in section 254, and the Commission's policies and rules in implementing section 254. As discussed above, this approach essentially requires a new entrant to provide service throughout high-cost areas prior to its designation as an ETC. We find that such a requirement stands as an obstacle to the Commission's execution and accomplishment of the full objectives of Congress in promoting competition and access to telecommunications services in high-cost areas. To the extent that a state's requirement under section 214(e)(1) that a new entrant provide service

throughout the service area prior to designation as an ETC also involves matters properly within the state's intrastate jurisdiction under section 2(b) of the Act, such matters that are inseparable from the federal interest in promoting universal service in section 254 remain subject to federal preemption.

19. *Section 214.* We find that the requirement that a carrier provide service throughout the service area prior to its designation as an ETC conflicts with the meaning and intent of section 214(e)(1). Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall ''offer'' and advertise its services. The statute does not require a carrier to provide service prior to designation. As discussed above, we have concluded that a carrier cannot reasonably be expected to enter a high-cost market prior to its designation as an ETC and provide service in competition with an incumbent carrier that is receiving support. We believe that such an interpretation of section 214(e) directly conflicts with the meaning of section 214(e)(1) and Congress' intent to promote competition and access to telecommunications service in high-cost areas.

20. While Congress has given the state commissions the primary responsibility under section 214(e) to designate carriers as ETCs for universal service support, we do not believe that Congress intended for the state commissions to have unlimited discretion in formulating eligibility requirements. Although Congress recognized that state commissions are uniquely suited to make ETC determinations, we do not believe that Congress intended to grant to the states the authority to adopt eligibility requirements that have the effect of prohibiting the provision of service in high-cost areas by non-incumbent carriers. To do so effectively undermines congressional intent in adopting the universal service provisions of section 254.

21. *Section 254.* Consistent with the guidance provided above, we find a requirement that a carrier provide service prior to designation as an ETC inconsistent with the underlying principles and intent of section 254. Specifically, section 254 requires the Commission to base policies for the advancement and preservation of universal service on principles that include promoting access to telecommunications services in high-cost and rural areas of the nation. Because section 254(e) provides that only a carrier designated as an ETC under section 214(e) may be eligible to receive federal universal service support, an interpretation of section 214(e) requiring carriers to provide service throughout the service area prior to designation as an ETC stands as an obstacle to the accomplishment of the congressional objectives outlined in section 254. If new entrants are effectively precluded from universal service support eligibility due to onerous eligibility criteria, the statutory goals of preserving and advancing universal service in high-cost areas are significantly undermined.

22. In addition, such a requirement conflicts with the Commission's interpretation of section 254, specifically the principle of competitive neutrality adopted by the Commission in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that, ''competitive neutrality in the collection and distribution of funds and determination of *eligibility* in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework.'' As discussed above, a requirement to provide service throughout the service area prior to designation as an ETC violates the competitive neutrality principle by unfairly skewing the provision of universal service support in favor of the incumbent LEC. As stated in the *Universal Service Order*, ''competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.'' Requiring new entrants to provide service throughout the service area prior to ETC designation discourages ''emerging technologies'' from entering high-cost areas. In addition, we note that section 254(f) provides that, ''[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.'' For the reasons discussed extensively above, we find an interpretation of section 214(e) requiring the provision of service throughout the service area prior to designation as an ETC to be inconsistent with the Commission's universal service policies and rules.

III. Ordering Clauses

23. Pursuant to sections 4(i), 253, and 254 of the Communications Act of 1934, as amended, and section 1.2 of the Commission's rules, and Article VI of the U.S. Constitution, that this Declaratory Ruling is adopted.

24. It is further ordered that Western Wireless' Petition for Preemption of an Order of the South Dakota Public Utilities Commission shall be placed in abeyance pending resolution of the appeal.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–22852 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–147; FCC 00–297]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document invites further comment on a number of issues related to the obligation of incumbent LECs to provide collocation. The Second Further Notice responds to the decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corp.* v. *FCC,* by requesting comment on the meaning of ''necessary'' and ''physical collocation.'' In addition, the document requests comment on whether an incumbent LEC must permit collocators to cross-connect with other collocators and on other collocation-related issues.

DATES: Written comments by the public on the proposed information collections are due October 12, 2000, and reply comments are due November 14, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 7, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Julie Patterson, Attorney Advisor, Common Carrier Bureau, Policy and

Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections in this Second Further Notice of Proposed Rulemaking, contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The complete text of this Second Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY–B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Second Further Notice of Proposed Rulemaking

1. The Second Further Notice of Proposed Rulemaking responds to the decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corp.* v. *FCC,* 205 F.3d 416 (D.C. Cir. 2000) by requesting comment on the meaning of ''necessary'' and ''physical collocation,'' as used in section 251(c)(6). In addition, the Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 asks whether an incumbent LEC must permit collocators to cross-connect with other collocators; whether the Commission should require incumbent LECs to make physical collocation space available in increments smaller than the space necessary to accommodate a single rack or bay of equipment; whether the Commission should amend its collocation to facilitate line-sharing and subloop unbundling; and regarding collocation at remote incumbent LEC premises.

2. In addition, the Second Further Notice requests comment on whether the Commission should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements, such as cageless collocation, modifications to existing collocation arrangements, or collocation within remote incumbent LEC structures and whether the Commission should adopt national standards governing the period for which incumbent LECs and collocating carriers can reserve space for future use in incumbent LEC premises.

Paperwork Reduction Act

3. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due November 7, 2000. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147, and Fifth FNPRM, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: New Collections.

Respondents: Business or other for-profit.

Number of Respondents: 1400.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 2800 hours.

Cost to Respondents: $0.

Needs and Uses: Requesting carriers would use demographic and other information obtained from incumbent LECs to determine whether they wish to collocate at particular remote terminals.

Final Regulatory Flexibility Analysis (FRFA)

4. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Advanced Services Order and NPRM (Notice) in CC Docket 98–147. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. We received no comments specifically directed toward the IRFA. In addition, we incorporated the Final Regulatory Flexibility Analysis (FRFA) into the Advanced Services First Report and Order and received no petitions for reconsideration specifically directed toward the FRFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

Need for and Objectives of This Second Further Notice of Proposed Rulemaking

5. This Second Further Notice continues our efforts to facilitate the development of competition in telecommunications services. In the Advanced Services First Report and Order, 63 FR 45133, August 24, 1998, we strengthened our collocation rules to reduce the costs and delays faced by competitors that seek to collocate equipment in incumbent LEC premises. While many aspects of those rules were affirmed on appellate review, the D.C. Circuit vacated and remanded certain aspects of those rules. In this Second Further Notice, we invite comment on what action we should take regarding the rules the D.C. Circuit vacated and remanded, and on other collocation related issues.

Summary of Significant Issues Raised by Public Comments in Response of the FRFA

6. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities and solicited comments on alternatives to our proposed rules that would minimize the impact that might have on small entities. In the Final Regulatory Flexibility Analysis (FRFA), we discussed the impact on small entities of the rules adopted in the Advanced Services First Report and Order. As noted above, we have received no comments or petitions specifically directed to the IRFA or the FRFA. In making the determinations reflected in the Order, however, we have considered the impact of our actions on small entities.

Description and Estimate of the Number of Small Entities Affected by the Second Further Notice of Proposed Rulemaking

7. In the IRFA to the Advanced Services Order and NPRM, we adopted the analysis and definitions set forth in determining the small entities affected by this Second Further Notice of Proposed Rulemaking for purposes of this SFRFA. The RFA directs agencies to

provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

8. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, inter alia, LECs, wireline carriers and service providers, interexchange carriers, competitive access providers, operators services providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

9. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

10. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,144 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 4,144 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules that potentially could be adopted based upon this Second Further Notice.

11. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,231 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules that could potentially result from this Second Further Notice.

12. *Local Exchange Carriers.* The Commission has not developed a special size definition of small LECs or competitive LECs. The closest applicable definition for these types of carriers under SBA rules is, again, that used for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 competitive LECs, and 442 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,348 small entity incumbent LECs, 212 competitive LECs, and 442 resellers that may be affected by the decisions and rules that could result from this Second Further Notice.

Description of Projected Reporting, Record Keeping, and other Compliance Requirements

13. In the Second Further Notice, we seek comment regarding rules recently vacated and remanded by the D.C. Circuit, as well as on other issues regarding collocation by incumbent LECs. We invite comment, for instance, on whether we should require incumbent LECs to make physical collocation space available in increments smaller than the space necessary to accommodate a single rack or bay of equipment. We request comment on issues relating to collocation at remote incumbent LEC premises, and on whether we should change our collocation rules to facilitate line sharing and subloop unbundling. We ask whether we should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements, such as cageless collocation, modifications to existing collocation arrangements, or collocation within remote incumbent LEC structures. We also ask whether we should adopt national standards governing the period for which incumbent LECs and collocating carriers can reserve space for future use in incumbent LEC premises. As described, the measures under consideration in

this Second Further Notice may, if adopted, result in additional reporting, record keeping, or other compliance requirements for telecommunications carriers, including small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

14. In this Second Further Notice, we seek to develop a record sufficient to adequately address issues related to developing long-term policies related to collocation. In addressing these issues, we seek to ensure that competing providers, including small entity carriers, obtain access to inputs necessary to the provision of advanced services. We believe that the issues on which we invite comment would impose minimal burdens on small entities, including both telecommunications carriers that request collocation and the incumbent LECs that, under section 251 of the Communications Act, must provide collocation to requesting carriers. As indicated above, both groups of carriers include entities that, for purposes of this SIRFA, are classified as small entities. In framing the issues in this Second Further Notice, we have sought to develop a record on the potential impact our proposed rules could have upon small entities. We thus ask that commenters propose measures to avoid significant economic impact on small business entities.

Procedural Matters

15. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and the Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 (Published elsewhere in this issue) Are Adopted.

16. The Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and this Fifth Further Notice of Proposed Rulemaking in CC Docket No., including the Supplemental Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22890 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; FCC 00–297]

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document continues the Commission's efforts to facilitate the development of competition in telecommunications services, particularly local telecommunications. The Commission invites comment on whether it should amend its unbundled network element rules to ensure that carriers are able to gain competitive access to subloops and loops as incumbent local exchange carriers (LECs) introduce new network technologies.

DATES: Written comments by the public on the proposed information collections are due October 12, 2000, and reply comments are due on November 14, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 7, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Johanna Mikes, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Further Notice of Proposed Rulemaking (5th FNPRM) in CC Docket No. 96–98, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. This 5th FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The complete text of this Fifth Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY-B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Fifth Further Notice of Proposed Rulemaking

1. The Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 invites comment on whether the Commission should amend its local competition rules to respond to new network architectures being deployed by incumbent LECs. In the Fifth Further Notice, we invite comment on several issues concerning the deployment of new network architectures, including whether we should modify or clarify our definition of the loop and transport elements to include access for requesting carriers at the wavelength level. We also request comment on the features, functions, and capabilities of the subloop created by the deployment of new network architectures. We invite comment on incumbent LECs' obligations to provide unbundled access to the subloop, particularly the fiber feeder portion, in situations where there is inadequate existing capacity. In addition, we invite comment on whether, as part of their deployment of additional fiber facility, incumbent LECs plan to retire and remove existing copper plant and how that would affect their obligations under our local

competition rules. We seek comment on whether we should change the technically feasible points at which competing carriers may access subloops at remote terminal locations.

Paperwork Reduction Act

2. This 5th FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this 5th FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this 5th FNPRM; OMB notification of action is due November 7, 2000 of this 5th FNPRM. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Proposed Demographic Information and Notifications, Second FNPRM, CC Docket No. 98–147, and Fifth FNPRM, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: New Collections.

Respondents: Business or other for-profit.

Number of Respondents: 1400.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 2800 hours.

Cost to Respondents: $0.

Needs and Uses: The Commission seeks comment on whether incumbent LECs are required under section 251(c)(5) or any other provision of the Act to notify competing carriers of where they are deploying fiber facilities in the loop. Competing carriers would use this information in planning their networks. The Commission also seeks comment on whether incumbents should provide notice to competitors before retiring and removing copper facilities. Competing carriers would use this information to ensure that such retirements and removals do not prevent them from delivering advanced services to their customers.

Final Regulatory Flexibility Analysis (FRFA)

3. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Advanced Services Order and Notice of Proposed Rulemaking 63 FR 45140, August 24, 1998, in CC Docket 98–147. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. We received no comments specifically directed toward the IRFA. In addition, we incorporated the Final Regulatory Flexibility Analysis (FRFA) into the Advanced Services First Report and Order and received no petitions for reconsideration specifically directed toward the FRFA. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

Need for and Objectives of this Fifth Further Notice of Proposed Rulemaking

4. This 5th FNPRM continues the Commission's efforts to facilitate the development of competition in telecommunications services, particularly local telecommunications. The Commission invites comment on whether we should amend our unbundled network element rules to ensure that carriers are able to gain competitive access to transport, subloops, and loops as incumbent LECs introduce new network technologies. Specifically, the Commission seeks comment on the legal and policy bases for amending its local competition unbundling rules to ensure that competitors will have competitive access to transport, subloops, and loops as new network technologies are deployed.

Summary of Significant Issues Raised by Public Comments in Response of the FRFA

5. In the IRFA, we stated that any rule changes would impose minimum burdens on small entities and solicited comments on alternatives to our proposed rules that would minimize the impact that might have on small entities. In the Final Regulatory Flexibility Analysis (FRFA), we discussed the impact on small entities of the rules adopted in the Advanced Services First Report and Order 63 FR 45133, August 24, 1998. As noted, we have received no comments or petitions specifically directed to the IRFA or the FRFA. In making the determinations reflected in the Order, however, we have considered the impact of our actions on small entities.

Description and Estimate of the Number of Small Entities Affected by the Fifth Further Notice of Proposed Rulemaking

6. In the IRFA to the Advanced Services Order and NPRM, we adopted the analysis and definitions set forth in determining the small entities affected by this Fifth Further Notice of Proposed Rulemaking for purposes of this SFRFA. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

7. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, inter alia, LECs, wireline carriers and service providers, interexchange carriers, competitive access providers, operators services providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

8. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer

employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

9. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,144 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 4,144 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules that potentially could be adopted based upon this Fifth Further Notice.

10. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,231 non-radiotelephone companies listed by the Census Bureau were reported to have fewer that 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules that could potentially result from this 5th FNPRM.

11. *Local Exchange Carriers.* The Commission has not developed a special size definition of small LECs or competitive LECs. The closest applicable definition for these types of carriers under SBA rules is, again, that used for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 competitive LECs, and 442 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,348 small entity incumbent LECs, 212 competitive LECs, and 442 resellers that may be affected by the decisions and rules that could result from this Fifth Further Notice.

Description of Projected Reporting, Record Keeping, and other Compliance Requirements

12. In the 5th FNPRM in CC Docket No. 96–98, we invite comment on several issues concerning the deployment of new network architectures. We ask, for instance, whether we should modify or clarify our definition of the loop to include access for requesting carriers at the wavelength level. We request comment on the features, functions, and capabilities of the subloop created by the deployment of new network architectures. We invite comment on incumbent LECs' obligations to provide unbundled access to the subloop, particularly the fiber feeder portion, in situations where there is inadequate existing capacity. We also seek comment on whether we should change the technically feasible points at which competing carriers may access subloops at remote terminal locations. We further invite comment on whether, as part of their deployment of additional fiber facility, incumbent LECs plan to retire and remove existing copper plant and how that would affect their obligations under our local competition rules. Finally, we inquire about whether we should alter our definition of the transport element in view of new network architectures being deployed by carriers.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

13. In the 5th FNPRM, we seek to develop a record sufficient to adequately address issues related to developing long-term policies for ensuring that competitive carriers have access to unbundled network elements as changes are made to traditional telephone networks. In addressing these issues, we seek to ensure that competing providers, including small entity carriers, obtain access to inputs necessary to the provision voice and advanced telecommunications services. We believe that the issues on which we invite comment could impose minimal burdens on small entities, including both telecommunications carriers that request unbundled network elements and the incumbent LECs that, under section 251 of the Communications Act, must provide unbundled network elements to requesting carriers. As indicated, both groups of carriers include entities that, for purposes of this SIRFA, are classified as small entities. In framing the issues in this Fifth Further Notice, we have sought to develop a record on the potential impact our proposed rules could have upon small entities. We thus ask that commenters propose measures to avoid significant economic impact on small business entities.

Procedural Matters

14. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r), that the Second Further Notice of Proposed Rulemaking in (Published elsewhere in this issue) CC Docket No. 98–147 and the Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 Are Adopted.

15. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Published elswhere in this issue) in CC Docket No. 98–147 and this Fifth Further Notice of Proposed Rulemaking in CC Docket No., including the Supplemental Final Regulatory Flexibility Analysis and the Initial

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22891 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2435]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 1, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by September 25, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations to allot Channel 278A to Centerville, Texas (MM Docket No. 99–257, RM–9683)

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–23014 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 3 p.m., Tuesday, September 19, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC: Discussion: FHLBank Capital Structure Prototypes.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 00–23274 Filed 9–6–00; 3:00 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Marathon Financial Corporation, Winchester, Virginia, to acquire 100 percent of the voting shares of Rockingham Heritage Bank, Harrisonburg, Virginia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Alpena Banking Corporation, Alpena, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Alpena (in formation), Alpena, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri, and its subsidiary, First Banks America, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Commercial Bank of San Francisco, San Francisco, California.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Brenton Banks, Inc., Des Moines, Iowa, and thereby indirectly acquire voting shares of Brenton Bank, Des Moines, Iowa.

In connection with this application, Applicant also has applied to acquire Brenton Investments, Inc., Des Moines, Iowa, and thereby engage in offering retail investment brokerage products and services, pursuant to § 228.25(b)(7) of Regulation Y; Brenton Insurance, Inc., Des Moines, Iowa, and thereby engage in offering insurance products to Applicant's customers, pursuant to § 225.28(b)(11)(vii) of Regulation Y; Brenton Savings Bank, FSB, Ames, Iowa, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y, and thereby indirectly acquire Brenton Mortgages, Inc., Des Moines, Iowa, and thereby engage in mortgage banking services, pursuant to § 228.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–23017 Filed 9–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT); September 11, 2000.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 14, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of status of new system project by Messrs. Petrick and Stiffler.

4. Review of FY 2000 budget and projected expenditures, approval of FY 2001 proposed budget, and review of FY 2002 estimates.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 5, 2000.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 00–23194 Filed 9–6–00; 10:36 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Program Enhance Supplement

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Publication of notice to the public that the Office of Community Services plans to deviate from the full and open competitive grant process in order to facilitate the award of funds under the Community Services Block Grant Discretionary Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that it plans to award a grant under the Community Services Block Grant Discretionary Program to develop, replicate and disseminate an educational tool to be utilized by community development corporations on a national level. This grant will be awarded to National Congress for Community Economic Development.

ADDRESSES:

Name and Address of Grants Officer: Mary Nash, Grants Officer, Administration for Children and Families, Office of Child Support Enforcement—4th Floor, 370 L'Enfant Promenade SW., Washington DC 20447, Telephone: (202) 260–7143

Name and Address of Program Official: Thelma Woodland, Branch Chief, Division of Community Discretionary Programs, Administration for Children and Families, Office of Community Services—5th Floor, 370 L'Enfant Promenade SW, Washington DC 20447, Telephone: (202) 401–5294

Statutory Authority: The community Services Block Grant Act of 1981, as amended, (Section 680 of the community Opportunities, Accountability, and Training and Educational Services (COATS) Act of 1998, authorizes the Secretary to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families, conduct rural community development activities and conduct neighborhood innovation projects.

The Catalog of Federal Domestic Assistance Number is 93.570.

Award Mechanism: Deviation from the competitive process to award a supplement under the Training and Technical Assistance Set-Aside of the Urban and Rural Community Economic Development and Rural Community Facilities Development Program.

Name of Proposed Grantee: National Congress for Community Economic Development.

Estimated Amount of Award and Proposed Period of Support: The proposed amount of the award is $110,000. The proposed period of support will be from 8/1/2000 to 12/31/2001.

Scope and Nature of Project: The funds will be used to expand the scope of work and augment 2000 Year funding to develop, replicate and disseminate an educational tool (a video and accompanying publications) to be utilized by community development corporations on a national level.

Reasons for Less Than Maximum Competition: The National Congress for Community Economic Development (NCCED) has received grants from OCS for the past 5 years. Their most recent grant, funded in 2000, is to help community development corporations (CDCs) access new resources and strengthen their network. NCCED provides training and technical assistance in the areas of resource development, commercial development and building corporate partnerships. NCCED proposes to celebrate the evolution and accomplishments of the field of economic development at its national conference scheduled for mid-October of this year. OCS plans to provide funding for a video with an accompanying booklet and separate historical retrospective publications to be used at this conference. Because of time constraints, it is not feasible to seek open and free competition for this award. In addition, the proposed grantee has exemplified high-quality work in the past and there is no other potential grantee that has the capacity to perform the work desired. NCCED has been a leader in assisting OCS in meeting the needs of CDCs in creating employment and business opportunities for low-income families. The video and other products, once developed, will be an important tool in the delivery of technical assistance to CDCs and in helping to ensure that the economic needs of low income individuals and families of the 21″ century are met through the creation of employment and business opportunities.

Dated: September 5, 2000.

Thornell Page,

Acting Director, Office of Community Services.

[FR Doc. 00–23114 Filed 9–7–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1400]

Draft ''Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications'' dated August 2000. The draft guidance document provides information to sponsors regarding assessment of the reproductive toxicity potential of preventive vaccines for infectious diseases. The draft guidance document, when finalized, is intended to provide sponsors with guidance for the conduct of reproductive toxicity studies for preventive vaccines and to consider establishing clinical pregnancy registries for preventive vaccines indicated for females of childbearing potential and pregnant individuals.

DATES: Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by December 7, 2000.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications'' to the Office of Communication, Training,

and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Considerations for Reproductive Toxicity Studies for Preventive Vaccines for Infectious Disease Indications'' dated August 2000. Pre-clinical reproductive toxicity studies of vaccines intended for maternal immunization and/or females of child bearing age are critical in assessing the potential for the developmental toxicity of the product. However, the performance and design of pre-clinical reproductive toxicity studies for vaccines to support their use in females of childbearing potential and/or for maternal immunization have not been addressed in the scientific literature. This draft guidance document would provide general and specific considerations that should be taken into account in the assessment of reproductive toxicity for preventive vaccines, and in establishing clinical pregnancy registries for vaccine products post-licensure. The draft guidance document does not address concerns regarding male reproductive toxicity and fertility studies.

This draft guidance document represents the agency's current thinking with regard to the performance and design of pre-clinical reproductive toxicity studies for vaccines. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by December 7, 2000. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at http://www.fda.gov/cber/guidelines.htm.

Dated: August 15, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–23052 Filed 9–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10011]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because of legislative mandate, Government Performance and Review Act (GPRA) goals, and the potential for public harm. In terms of legislation, the 1997 Balanced Budget Act requires HCFA to offer comparative health plan information for the purposes of ''informed choice.'' In addition, two of the clearly stated goals of the HCFA strategic plan are to ''purchase the best value health care for beneficiaries'' and to ''promote beneficiary and public understanding of HCFA and its programs.''

The improved awareness by beneficiaries of the Medicare program has been incorporated into HCFA's Government Performance and Review Act (GPRA) goals (See: ''Performance Goal M+C1–02: Improve Effectiveness of Dissemination of Medicare Information to Beneficiaries''). Recent analyses of the Medicare Beneficiary Survey data suggest that stage of readiness to make informed choice, which the Pro-Change Behavior Systems Survey will yield, will be a better predictor of knowledge about Medicare than other extant predictors (See: ''Assessing Readiness of Medicare Beneficiaries to Participate in Informed Health Care Choices''). Expediting the clearance of this survey would help HCFA fulfill the goals of HCFA's Government Performance and Review Act (GPRA) as soon as possible.

In addition to the legislative mandate and GPRA, the survey should be expedited to prevent public harm. Recent research conducted by the contractor, Pro-Change Behavior Systems, Inc., has demonstrated that the Medicare beneficiary population contains many who fail to review the adequacy of their health insurance arrangements even on a cursory basis (See: ''Assessing Readiness of Medicare

Beneficiaries to Participate in Informed Health Care Choices''). Unless we are able to identify those individuals and target appropriate outreach and communications strategies to prompt more attention to information about health care choices, at least some beneficiaries will find themselves with inadequate or inappropriate health insurance and may find themselves harmed as a result.

HCFA is requesting OMB review and approval of this collection by September 30, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by September 26, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection;

Title of Information Collection: Stages of Change Survey for Informed Choice in the Medicare Population;

Form No.: HCFA–10011 (OMB# 0938–NEW);

Use: This is a survey of Medicare beneficiaries in the first step in the application the Transtheoretical Model (the ''stage model'') to informed choice in the Medicare population. The Transtheoretical Model has been applied and proven effective in facilitating behavior change in a wide range of health behaviors including smoking cessation, mammography screening, and safe sex. This work will yield psychometrically sound and externally valid measures of beneficiaries' readiness to make informed choices about health plans, and provide information to HCFA to assist with its national educational campaign to inform beneficiaries about their choices. Stages of Change measures will be administered to 560 Medicare beneficiaries and initial enrollees. This survey research will yield psychometrically sound measures of beneficiaries' readiness to make informed choices about health plans, and provide information to guide HCFA's National Medicare Education Program (NMEP).;

Frequency: Other: One-time survey;

Affected Public: Individuals or households;

Number of Respondents: 560;

Total Annual Responses: 560;

Total Annual Hours: 327.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by September 26, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan (HCFA–10011), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: September 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–23022 Filed 9–7–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–216 & HCFA–2384]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Organ Procurement Organization/Histocompatibility Laboratory Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations Contained in 42 CFR 413.20 and 413.24;

Form No.: HCFA–216 (OMB No. 0938–0102);

Use: This form is required by statute for participation in the Medicare program. The information is used to determine reasonable costs incurred to furnish treatment to End Stage Renal Disease (ESRD) patients by Organ Procurement Organizations and Histocompatibility Laboratories.

Frequency: Annually;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 108;

Total Annual Responses: 108;

Hours: 4,860.

(2)*Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Third Party Premium Billing Request and Supporting Regulations in 42 CFR 408.6;

Form No.: HCFA–2384 (OMB 0938–0041);

Use: The Third Party Premium Billing Request is used as an authorization form to designate that a family member or other interested party receive the Medicare premium bill and pay it on behalf of a Medicare beneficiary.

Frequency: On occasion;

Affected Public: Individuals or Households;

Number of Respondents: 15,000;

Total Annual Responses: 15,000;

Total Annual Hours: 6,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 9, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–23081 Filed 9–7–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1153–N]

Medicare Program; Open Town Hall Meeting To Discuss Medicare Policy for Community Mental Health Centers on September 25, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to provide an opportunity for community mental health centers (CMHCs), Medicare beneficiaries, advocates for the mentally ill, and other interested parties to address our staff in an effort to promote full understanding of our regulations and instructions on our partial hospitalization benefit.

DATES: September 25, 2000, from 8:30 a.m. until 12:30 p.m. C.D.T.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 818 Airport Boulevard, Houston, Texas 77061 located at the airport in Houston. Special arrangements have been made with the Hilton to hold a number of rooms for out of town guests interested in attending. To reserve your room, please call the Hilton directly at (713) 645–3000 no later than September 15, 2000. When calling to make a reservation, refer to the town hall Meeting.

FOR FURTHER INFORMATION CONTACT: Janet Samen, (410) 786–9161. Health Care Financing Administration, 7500 Security Blvd., Mail Stop C5–05–27, Baltimore, Maryland 21244.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing a town hall meeting to provide an opportunity for the public, especially community mental health centers (CMHCs) and other advocates for the mentally ill to raise issues regarding the Medicare partial hospitalization benefit and other issues related to CMHCs. This town hall meeting provides a forum for CMHC providers to address us and express their views regarding our partial hospitalization policies and operational procedures. We intend to discuss the results of the CMHC initiative undertaken over the last year and our future plans regarding CMHCs and the partial hospitalization benefit.

II. Format of Meeting

We will begin the meeting with an overview of CMHC and partial hospitalization policy from our staff. This will be followed by remarks by members of Congress, and presentations from interested parties. Any member of the public may file a written statement to the For Further Information Contact. Although we will make an effort to allow for ad hoc comments from meeting participants, individuals who wish to make a presentation are urged to contact David Wright at (214) 767–6346 as soon as possible. There will be a limited time for participants to make presentations; participants will speak in the order in which they sign up. While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

III. Registration

J.W. Associates, LLC, as contractor for us, will handle registration for the meeting. Individuals may register by sending an e-mail to jwallc.com or telephone (301) 495–9471. At the time of registration, please provide your name, address, telephone number, and e-mail address. Receipt of your e-mail or telephone registration will constitute confirmation of your registration. We will provide you with meeting materials at the time of the meeting. If you have questions regarding registration, please contact Em'Ria Briscoe at (301) 495–9471.

Authority: Section 1871 of the Act (42 U.S.C. 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 4, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–23138 Filed 9–7–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3036–N]

Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—October 17 and 18, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee (MCAC). The panel provides advice and recommendations to the agency about clinical issues. The panel will hear and discuss presentations from interested persons regarding electrostimulation for the treatment of wounds and sacral nerve stimulation for the treatment of refractory urinary urge incontinence and refractory urgency-frequency syndrome. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES:

The Meeting: The meeting will be held on October 17, 2000 from 8 a.m. until 4 p.m., and on October 18, 2000 from 8 a.m. until 2:30 p.m. E.D.T.

Deadline for Presentations and Comments: September 26, 2000, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, and have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by September 19, 2000.

ADDRESSES:

The Meeting: The meeting will be held at the Baltimore Convention Center, Room 327, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5699 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the MCAC.

Current Panel Members

Alan M. Garber, M.D.; Michael D.Maves, M.D.; Angus M. McBryde, M.D.; H.Logan Holtgrewe, M.D.; Arnold M. Epstein, M.D., Kenneth P. Brin, M.D.; Les J. Zendle, M.D.; Bruce Sigsbee, M.D.; James P. Rathmell, M.D.; Phyllis E. Greenberger, M.S.W.; Marshall S. Stanton, M.D.

Meeting Topic

The Panel will hear and discuss presentations from interested persons regarding electrostimulation for the treatment of wounds the first day and sacral nerve stimulation for the treatment of refractory urinary urge incontinence and refractory urgency-frequency syndrome in adults the second day.

Procedure and Agenda

This meeting is open to the public. The panel will hear oral presentations from the public for approximately 2.5 hours each day of the meeting. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the For Further Information Contact person, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. A written copy of your presentation must be provided to each panel member prior to offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Panel. After our presentation, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. Each day, the Panel will allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. At the conclusion of each day, the members will vote and the Panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 29, 2000.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–23137 Filed 9–7–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 31, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–22830 Filed 9–7–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

ACTION: Correction.

SUMMARY: The U.S. Fish and Wildlife Service (Service) published an Information Collection Notice on September 5, 2000 (65 FR 53737), for the Federal Aid Grants Application Booklet. It stated in ''Action'' that it was for an Information Collection Renewal, it is a New Information Collection, not a renewal.

Dated: September 5, 2000.

Rebecca A. Mullin,

Fish and Wildlife Service Information Collection Officer.

[FR Doc. 00–23140 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits 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.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''victoria_davis@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption.

Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written data or comments on these applications must be received, at the address given below, by October 10, 2000.

ADDRESSES: 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, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permits Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Dr. Thomas C. Emmel, University of Florida, Gainesville, Florida, TE027393–0

The applicant requests a permit to capture the Swallowtail butterflies, *Heraclides (Papilio) aristodemus ponceanus,* and to maintain existing captive populations for the purpose of reintroduction to the wild throughout the southern Florida mainland and Keys.

Applicant: Tetra Tech, Inc., Owings Mills, Maryland, TE032755–0

The applicant requests authorization to take (capture, identify, release) federally-listed fishes (spotfin chub, *Cyprinella monacha;* duskytail darter, *Etheostoma percnurum;* yellowfin madtom, *Notorus flavipinnis*), during the course of aquatic surveys in the Holston River within the Holston Army Annunition Plant, Kingsport, Tennessee (Hawkins County). Any taking would occur during routine biological surveys for the purpose of enhancement of survival of the species.

Dated: September 1, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–23039 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with an 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: USDA Forest Service, Parsons, West Virginia PRT–TE032363.

The applicant requests authorization to take (harm and/or harass during management of habitat and monitoring of species) *Trifolium stoloniferum* (running buffalo clover) throughout Tucker County, West Virginia for the purpose of enhancement and survival of the species.

Documents and other information submitted with this application are available for review 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, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: (413) 253–8628; Facsimile: (413) 253–8482.

Written data or comments should be submitted to the Regional Permits Coordinator, at the above address, and must be received on or before October 10, 2000.

Dated: August 28, 2000.

Richard A. Coleman,

Acting Regional Director, Region 5.

[FR Doc. 00–23082 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Incidental Take Permits and Availability of an Environmental Assessment Associated With an Amendment to the Ocean Trails Habitat Conservation Plan, City of Rancho Palos Verdes, Los Angeles County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: Ocean Trails, L.P. and the City of Rancho Palos Verdes (Applicants) have applied to the Fish and Wildlife Service for approval of an amendment to the Ocean Trails Habitat Conservation Plan and for issuance of incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act, 1973, as amended (Act). In 1997, the Service issued incidental take permit PRT–799348 to the Palos Verdes Land Holdings Company and the Zuckerman Building Company for incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) and other species associated with the Ocean Trails Project in Rancho Palos Verdes, California.

Subsequently, the original permittees formed the Ocean Trails, Limited Partnership, a new legal entity that proposes to assume the responsibilities of the original permitees. Since permit issuance, a landslide and road damage have occurred within habitat areas that were established as mitigation for the Ocean Trails Project. Both Applicants now seek permits for a period of 10 years that would authorize incidental take of the coastal California gnatcatcher associated with landslide and road repair proposed under the amendment to the Habitat Conservation Plan. In addition, Ocean Trails, L.P. seeks to transfer permit PRT–799348 to itself and to add the endangered Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesenis*) to this amended permit in the event that this species colonizes the planning area.

The Service seeks public comment on the permit applications, which include an Assumption Agreement for Ocean Trails L.P., as well as amendments to the original Habitat Conservation Plan and to the Implementation Agreement that defines the responsibilities of the parties under the Plan. We also seek comment on an amendment to the Environmental Assessment for our proposed permit actions. All comments will become part of the administrative record and may be released to the public.

DATES: We must receive your written comments on or before November 7, 2000.

ADDRESSES: Please address comments to the Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Beth Woulfe, Branch Chief, at the above address or call (760) 431–9440.

Availability of Documents

You may obtain copies of the documents for review by calling the Service's Carlsbad Fish and Wildlife Office at the above referenced telephone number. Documents also are available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and its implementing regulations prohibit the ''take'' of threatened or endangered species. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). The Service, however, may issue permits to take endangered and/or threatened wildlife species incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered and/or threatened species are found at 50 CFR 17.22 and 17.32.

We propose to transfer permit PRT–799348 to Ocean Trails, L.P. and to amend this permit to authorize incidental take of the Palos Verdes blue butterfly and coastal California gnatcatcher from L.P.'s proposed activities as described in the amendment to the Habitat Conservation Plan. We also propose to issue a separate permit to the City of Rancho Palos Verdes to authorize incidental take of the coastal California gnatcatcher from proposed City road repairs within Shoreline Park.

The amended Habitat Conservation Plan describes alternatives to the action and provisions for minimization, mitigation, and monitoring of impacts. These proposed actions would compensate for both the temporary and permanent loss of habitat resulting from the proposed Projects and would benefit the long-term conservation of the coastal California gnatcatcher and the Palos Verdes blue butterfly.

The City of Rancho Palos Verdes would restore and conserve 1.68 acres of sage scrub habitat for both temporary and permanent impacts that would be caused by road repair within Shoreline Park. Ocean Trails, L.P. would plant the larval host plant of the Palos Verdes blue butterfly, grown from local seed, in several of its revegetation areas and may also allow for the species to be relocated to the Project site. In addition, Ocean Trails, L.P. would restore 26.96 acres of sage scrub habitat on both the reconstructed and stabilized landslide area and within the Shoreline Park conservation area. Ocean Trails, L.P. also would relocate the 10-acre revegetation site from the Switchback area to Shoreline Park. These sites are being managed in perpetuity for the conservation of the species covered by the Ocean Trails Habitat Conservation Plan.

The amendment to the Habitat Conservation Plan and the amendment to the Environmental Assessment considers three alternatives to each of the four aspects of the proposed Project:

A. *Palos Verdes Blue Butterfly:* (1) Under the No Project alternative, the Palos Verdes blue butterfly would not be added as a covered species under the Ocean Trails Habitat Conservation Plan; (2) Under the second alternative, partial replanting of the Palos Verdes blue butterfly host plant would take place on the Project site; and (3) Under the Proposed Project alternative, the Palos Verdes blue butterfly would be added as a covered species under the Ocean Trails Habitat Conservation Plan and the host plant would be planted in all of the Project's revegetation areas.

B. *Landslide Remediation:* (1) Under the No Project alternative, the Service would not approve the amendment and the landslide would not repaired; (2) Under the second alternative, there would be complete landslide removal and replacement; and (3) Under the Proposed Project alternative, there would be partial landslide removal and replacement along with both onsite and offsite revegetation.

C. *Location of the 10-Acre Switchback Mitigation Site:* (1) Under the No Project alternative, revegetation would remain in the Switchback area without irrigation; (2) Under the second alternative the habitat restoration required by the Habitat Conservation Plan and by this amendment would be installed at the White Point Preserve in San Pedro; and (3) Under the Proposed Project alternative the habitat restoration required by the Habitat Conservation Plan and by this amendment would be installed in the southern half of Shoreline Park adjacent to the existing revegetation efforts in the northern half of the park.

D. *Road Repair:* (1) Under the No Project alternative, the amendment would not be approved and the road would not be repaired and would continue to deteriorate, causing a significant danger to public health and safety; (2) Under the second alterative, the road would be excavated down to the base of the slope and reconstructed with properly compacted fill; and (3) Under the Proposed Project alternative, the road would be repaired by excavating down a maximum of 20 feet below the road surface and adding drainage improvements, impacting a maximum of 0.43 acre of sage scrub habitat

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). We will evaluate the permit applications, the amended Habitat Conservation Plan, amended Environmental Assessment, the associated documents and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met: (1) We will transfer permit PRT–799348 to Ocean Trails, L.P. and amend it to authorize incidental take of the Palos Verdes blue butterfly and coastal California gnatcatcher from L.P.''s proposed activities; and (2) we will issue a separate permit to the City of Rancho Palos Verdes to authorize incidental take of the coastal California gnatcatcher from proposed City road repairs. We will make a final decision on these permit actions no sooner than 60 days from the date of this notice.

Dated: August 30, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–23035 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Western Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species Western Regional Panel Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Panel will meet from 8:30 a.m. to 5 p.m., on Tuesday, September 26, 2000, and 8:30 a.m. to 5 p.m. on Wednesday, September 27, 2000.

ADDRESSES: The meeting will be held at the Elihu M. Harris State Building, 1515 Clay Street, Training Rooms B, C, D, 2nd Floor, Oakland, California.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov* or Linda Drees, Western Regional Panel Coordinator at 785–539–3473 (ext. 107) or by e-mail at *linda_drees@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Western Regional Panel Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, provides the following: (1) Identifies priorities for the Western Region with respect to aquatic nuisance species; (2) makes recommendations to the Task Force regarding an education, monitoring (including inspection), prevention, and control program to prevent the spread of the zebra mussel west of the 100th Meridian; (3) coordinates with other aquatic nuisance species program activities in the Western region; (4) develops an emergency response strategy for Federal, State, and local entities for stemming new invasions of aquatic nuisance species; and (5) provide advance to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species. The focus of this meeting will be to: review Panel activities for the past year and develop priorities for the coming year; develop plans to implement priority actions; and provide updates of ongoing activities including ballast water treatment research, marine exotic species surveys and other emerging issues.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: September 5, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistance Director—Fisheries and Habitat Conservation.

[FR Doc. 00–23121 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: On August 10, 2000 we published a notice of receipt of application for approval (65 FR 49007) from the CITES Management Authority of Argentina, Direccion de Fauna y Flora Silvestre, Buenos Aires. The applicant wishes to establish a scientifically based sustainable management plan for the Blue-fronted amazon parrot (*Amazona aestiva*) in Argentina. The comment for this application is scheduled to end on September 10, 2000. The comment period is hereby extended until October 11, 2000. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on this application.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director by October 11, 2000.

Documents and other information submitted with this application 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, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 5, 2000.

Andrea Gaski,

Acting Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 00–23139 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

MPI Drilling, Inc.; Proposed Cooperative Research and Development Agreement

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations under the Technology Transfer Act of 1986.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with MPI Drilling, Inc. for the development of improved drilling technology.

INQUIRIES: Information on the proposed CRADA is available to the public upon request at the address below. If any other parties are interested in similar activities with the USGS, please contact: Wayne L. Newell, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone: 703–648–6991; Internet: *wnewell@usgs.gov*.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 00–23083 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the

Shoshone-Bannock Tribes and the State of Idaho, executed on February 18, 2000.

DATES: This action is effective September 8, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 24, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–23091 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Special Fire Restrictions—Restrictions and Conditions of Use in the Lewistown, Butte and Dillon Field Offices, MT

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 12:01 pm Mountain Daylight Time Tuesday, September 5, 2000, on BLM lands in the Montana counties listed below.

The Level 4 fire restrictions apply to BLM lands in: Carbon, Sweet Grass, Stillwater, Park, Gallatin, Madison, Beaverhead, Jefferson, Broadwater, Meagher, Lewis and Clark east of the continental divide, Cascade, Teton, Pondera, Toole and Glacier 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)). Gas and liquid-fueled stoves and lanterns are still permitted at a signed developed, designated recreation site or campground.

Contained units, campers, trailers, etc. are not restricted to designated areas if cooking within the contained unit. This includes pickups with toppers, but not an open pickup bed. Boats on water are considered a contained unit.

Camping in contained units is confined to areas immediately adjacent to open roads.

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 with a grazing, oil and gas or mining permit performing activities in accordance with their permit. Cleared roads are defined as roads cleared of vegetation shoulder to shoulder (43 CFR 9212.1(h)).

Travel via foot or bicycle will be allowed on roads that have been closed due to the extreme fire danger.

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 two hour following the cessation of all work activity. The patrolperson's responsibilities include checking for compliance with required fire precautions.

These restrictions are in addition to the following area closures: Departure Point Campground at Holter Lake T14 N, R 3 W, Sec 23, NE 1/4; Sleeping Giant Area including BLM lands along west shore of Holter Lake from Jackson Peak to the southern boundary across from Mann Gulch and east to I–15; Scratch Gravel Hills, near Helena.

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue, firefighting force or law enforcement 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 12:01 pm, Mountain Daylight Time, Tuesday, September 5, 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 at 12:01 pm (noon) on Tuesday, September 5, 2000, and will 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: September 5, 2000.

Roberta A. Moltzen,

Acting State Director.

[FR Doc. 00–23196 Filed 9–6–00; 12:37 pm]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Special Fire Restrictions—Restrictions and Conditions of Use in the Missoula and Butte Field Offices, Montana.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 Code of Federal Regulations (CFR) 9212.2, the following acts are prohibited on all Bureau of Land Management lands administered by the Missoula Field Office in Missoula, Granite, and Powell counties and all lands administered by the Butte Field Office in Deer Lodge, west Silver Bow, and west Lewis and Clark counties. These restrictions are in addition to those enumerated in 43 CFR 9212.1 and become effective as of 12 p.m. (noon), Mountain Daylight Time on September 5, 2000. They will remain in effect until rescinded or revoked. They replace the restrictions enacted on August 11, 2000, which are hereby terminated.

Building, maintaining, attending, or using a campfire or any open fire except at a developed, designated recreation site or campground (43 CFR 9212.1(h)).

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 (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 between 1 p.m. and 1 a.m. local time. 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)).

Using chainsaws or other equipment with internal combustion engines for felling, bucking, skidding, wood cutting or any other operation within areas having a significant accumulation of dead or down slash or timber (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 forest fires (43 CFR 9212.1(h)).

A patrol is required for a period of two hours after any woods operations including felling, bucking, skidding, woodcutting, or road building cease. A patrol is also required for 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 cleared of vegetation shoulder to shoulder(43 CFR 9212.1(h)).

Exemptions to the above prohibitions are allowed only for any Federal, State, or local officer, or member of an organized rescue or firefighting force or Law Enforcement in the performance of an official duty, or persons with a permit or written authorization allowing the otherwise prohibited act or omission.

Violation of this order is prohibited by the provisions of the regulations cited. Under 43 CFR 9212.4, any violation is subject to punishment by a fine of not more than $1,000 or imprisonment of not more than 12 months, or both.

DATES: Restrictions go into effect at 12:01 pm (noon) on Tuesday, September 5, 2000, and will 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: September 5, 2000.

Roberta A. Moltzen,

Acting State Director.

[FR Doc. 00–23197 Filed 9–6–00; 12:37 pm]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–HN–003E]

Notice of Rescindment of Special Fire Closures in Billings, Missoula, Helena, Butte and Dillon Field Offices; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 Code of Federal Regulations 9212.2, the prohibitions listed in Order No. MT–00–03, MT–00–05, MT–00–06, applicable to Bureau of Land Management lands administered by the Billings, Missoula, Helena, Butte and Dillon Field Offices, dated August 11, 2000, August 17, 2000, and August 23, 2000, will be terminated at 12 noon Tuesday, September 5, 2000.

DATES: Restrictions are terminated at 12:01 pm (noon) on Tuesday, September 5, 2000.

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: September 5, 2000.

Roberta A. Moltzen,

Acting State Director.

[FR Doc. 00–23198 Filed 9–6–00; 12:37 pm]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–023–1232–EA–NV06; Special Recreation Permit #NV–023–00–03]

Nevada: Emergency Closure of Certain Public Lands in the Winnemucca District for the Management of Lands and Activities Located In and Around the Burning Man Event Site, Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Closures and restrictions of public lands in Washoe and Pershing Counties.

SUMMARY: Certain lands would be temporarily closed on an emergency basis, in the Winnemucca District, Pershing and Washoe Counties, Nevada, to public use from 6 a.m., August 28 to 12 pm, September 6, 2000. This emergency closure is being made in the interest of public safety in relation to an authorized Burning Man Event airstrip south and southwest of the Burning Man site, at and around the public lands location of an event known as the Burning Man Festival. This event is expected to attract at least 28,000 participants this year, with a certain percentage of clientele arriving by aircraft and landing on the authorized airstrip. All other temporary closures and prohibitions as previously published in the **Federal Register** for this location remain in effect. The lands involved are located in the Mount Diablo Meridian and located northeast of Gerlach, Nevada.

The ''Middle Track'' and ''East Track'' that lead out from the ''First Exit/Entrance'' (''3-Mile'') to the playa areas east and west of the Burning Man site, from the Burning Man site east to the Union Pacific Railroad Tracks, and the entire Southern end of the playa southwest of Burning Man will be closed public use during the Burning Man event period, 6 a.m., August 28 to 12 pm, September 6, 2000, with the exception of BLM personnel, law enforcement and emergency medical services, and authorized Burning Man staff. The ''tracks'' are those sunken roadways or trackways on the Black Rock Desert playa that traverse the length of the playa ''west arm.'' The affected playa lands southwest to northeast are:

T32N, R23E,
Sec. 1; Sec. 2; Sec. 3; Sec. 11; Sec. 12; Sec. 13; Sec. 14.
T33N, R23E,
Sec. 25; Sec. 26; Sec. 34; Sec. 35; Sec. 36.
T32N, R24E,
Sec. 5; Sec. 6.
T33N, R24E,
Sec. 1; Sec. 2; Sec. 3 ; Sec. 4; Sec. 5; Sec 8; Sec. 9; Sec. 10; Sec. 11; Sec. 12; Sec. 13; Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18; Sec 19; Sec. 20; Sec. 21; Sec. 22; Sec. 28; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T33, R25E,
Sec. 2; Sec. 3; Sec. 4.

The 3-Mile (First Exit/Entrance) will be closed during the Burning Man event period, August 28, 2000 to September 4, 2000, with the exception of BLM personnel, law enforcement and emergency medical services, and authorized Burning Man staff. The affected lands are:

T33N, R23E,
Sec. 35, NW¼ of the SW¼.

A map showing the temporary closure area is available from the following BLM

office: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Michael Bilbo, Outdoor Recreation Planner, or Les Boni, Assistant manager, Non-Renewable Resources, at (775) 623–1500, or write to: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445. A map showing the temporary closure area is available from the following BLM office: Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445, (775) 623–1500. BLM contact person is Michael Bilbo at above address and phone.

Authority: 43 CFR part 8340, 43 CFR subpart 8341, 43 CFR subpart 8341.2, 43 CFR part 8360, 43 CFR subpart 8364.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both. Any person who fails to comply with this closure notice issued under 43 CFR, part 8364, may be subject to the penalties provided for in 43 CFR 8360.0–7.

Dated: August 25, 2000.

Terry Reed,

Field Manager, Winnemucca Field Office.

[FR Doc. 00–23084 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1020–PH–WEED]

Use of Weed-Free Forage on Public Lands in Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed action.

SUMMARY: The State Director of the Bureau of Land Management (BLM) in Nevada is proposing a requirement that all BLM visitors, permittees, and operators in Nevada use certified noxious weed seed-free hay, straw, or mulch when visiting, or conducting authorized activities on BLM-administered lands in Nevada. This requirement will affect visitors who use hay, straw, or mulch on the BLM-administered lands in Nevada such as: recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors and operators who use straw or other mulch for re-seeding or reclamation purposes. These individuals or groups would be required to use certified noxious weed seed-free forage and mulch products, or use other approved products such as processed grains and pellets while on BLM-administered lands in Nevada.

DATES: Comments concerning the proposal should be received on or before October 10, 2000.

ADDRESSES: Send written comments concerning the Nevada requirement to: Deputy State Director (930), USDI, Bureau of Land Management, 1340 Financial Blvd, P.O. Box 12000, Reno, Nevada 89520–0006. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of any NEPA documentation associated with this proposed rulemaking. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Nevada State Office, Brian C. Amme, Environmental Protection Specialist, Division of Natural Resources, Lands, and Planning, at the above address, or telephone (775) 861–6645.

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM-administered lands and 4,600 acres per day on all western public lands. Species like perennial pepperweed (tall whitetop), purple loosestrife, yellow starthistle, hoary cress (short whitetop), leafy spurge, spotted knapweed, russian knapweed, diffuse knapweed, squarerose knapweed, scotch thistle, dalmatian toadflax, rush skeletonweed, and many others are non-native to Nevada and the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds rapidly invade healthy ecosystems, displace native vegetation, reduce species diversity, destroy wildlife habitat, and degrade designated wilderness, wilderness study areas, and other special areas including areas of critical environmental concern (ACECs) and National Conservation Areas (NCAs). Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken rehabilitation and landscape restoration efforts, reduce domestic and wild ungulates' grazing capacity, occasionally irritate public land users by aggravating allergies and other ailments, and threaten federally protected plants and animals.

To curb the spread of noxious weeds, a growing number of Western States have jointly developed noxious weed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Because hay, straw, mulch, and other forage products containing noxious weed seed contribute to the spread and establishment infestations, the State of Nevada has recently implemented, a state hay inspection-certification program, participates in a regional inspection-certification-identification process, and encourages, on a voluntary basis, forage producers in Nevada to grow noxious weed-free products. The Nevada Division of Agriculture has documented that growers in Nevada produced 250 acres of certified Timothy hay as of October 30, 1999. The State of Nevada encourages growers to request voluntary certification inspections of all forage products including grass hay, alfalfa hay, a mixture of grass and alfalfa hay, as well as barley and wheat straw.

Region Four of the United States Forest Service, Department of Agriculture, implemented a similar policy for National Forest lands outside of the State of Nevada in 1994, and Forest Units within the State of Nevada on January 1, 2000. The BLM in Nevada encourages all BLM Field Offices to attach a standard stipulation on all Special Recreation Permits and other use authorizations, requiring holders of those permits and authorizations to use certified weed seed-free products. This proposal will provide a standard regulation for all users of BLM public lands in Nevada and will provide for coordinated management with National Forest lands across jurisdictional lines.

In cooperation with the State of Nevada and other federal agencies, the BLM is proposing—for all BLM-administered lands within Nevada—a ban on hay, straw or mulch that has not been certified as weed seed-free. This proposal includes a public information plan to ensure that: (1) This ban is well publicized and understood; and (2) BLM visitors and land users will know where they can purchase state-certified hay or other products. Similar to other agency closure orders, a grace period will be in

effect prior to the implementation date of this proposed supplementary rule. This proposal is in conformance with all Land Use Plans within Nevada and consistent with BLM policy on establishing weed-free hay, straw and mulch programs as identified in Washington Office Instruction Memorandum 99–076 (2/25/99).

This supplementary rule will not appear in the Code of Federal Regulations.

The principal author of the proposed supplementary rule is Brian C. Amme, Environmental Protection Specialist, of the Nevada State Office, BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the Nevada State Office, BLM, proposes the supplementary rule to read as follows:

Supplementary Rules To Require the Use of Certified Noxious Weed Seed-Free Forage on Bureau of Land Management-Administered Lands in Nevada

(a)(1) To prevent the spread of weeds on BLM-administered lands in Nevada, effective October 1, 2001, all BLM lands within the State of Nevada, at all times of the year, shall be closed to possessing or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed seed.

(2) Certification will comply with ''Regional Standards'' jointly developed by the states of Nevada, Idaho, Montana, Utah, Wyoming, and Nebraska for noxious weed seed-free and noxious weed-free forage.

(3) The following persons are exempt from this order: anyone with a permit signed by BLM's authorized officer at the Field Office or Field Station specifically authorizing the prohibited act or omission within that Field Office or Station's administered area.

(b) Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of non-certified noxious weed-free hay, straw, or mulch when visiting Bureau of Land Management administered lands in Nevada, without authorization required, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code 1733(a).

Robert V. Abbey,

State Director, Bureau of Land Management, Nevada.

[FR Doc. 00–23023 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–0–1430–EU; MNES–050506]

Realty Action; Direct Sale of Public Lands in Kanabec County, Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has determined that the below listed public lands located in Kanabec County, Minnesota, are suitable for sale utilizing direct non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6964, the described lands are hereby classified as suitable for disposal under the authority of Section 203 of the Act of October 21, 1976; 43 U.S.C. 1713.

Fourth Principal Meridian

T. 28 N., R. 39 W.,
Section 28, SE¼ SE¼ NE¼ SE¼ SW¼, E½ NE¼ SE¼ SE¼ SW¼

The above lands aggregate 2.5 acres.

ADDRESSES: Address comments to Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, (414) 297–4413.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above described lands to Mr. Stanley Erickson, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent unauthorized use on public land.

The proposed sale is consistent with the Minnesota Management Framework Plan and would serve important public objectives which could not be achieved by other means. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Milwaukee Field Office, Milwaukee, Wisconsin.

Conveyance of the above described public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager at the address above. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: September 1, 2000.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 00–23040 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–62434, N–62831]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value of $310,000.00. Authority for the sale is section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and the Southern Nevada Public Land Management Act of 1998 (Pub.L. 105–263).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec.23,S½SW¼NW¼SW¼NW¼, S½NE¼NW¼SE¼NW¼.
Containing 2.5 acres, more or less, located at Blue Diamond Road (State Route 160), Redwood Street and Rainbow Boulevard.

These parcels of land, situated in Las Vegas are being offered as a direct sale to Donald Tripoli, the adjacent property owner. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct

sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals; and will be subject to:

1. All valid existing rights.

2. Easements in accordance with the Clark County Transportation Plan.

3. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N–58927 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for State Route 160 which have been granted to Nevada Department of Transportation by Permit No. NEV–012728 under the act of August 27, 1958 (23 U.S.C. 107, 317).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 28, 2000.

Mark T. Morse,

Field Manager, Las Vegas, Nevada.

[FR Doc. 00–23085 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–00–39]

Rio Grande and Low Flow Conveyance Channel Between San Acacia Diversion Dam, NM, and the Narrows of Elephant Butte Reservoir, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Draft Eenvironmental Impact Statement on the Rio Grande and Low Flow Conveyance Channel Modifications.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a Draft Environmental Impact Statement (DEIS) on modifications to the Rio Grande and Low Flow Conveyance Channel system. The proposed modifications are located downstream from San Marcial, New Mexico.

The purpose of the DEIS is to analyze the environmental impacts of the proposed modifications to the main channel of the Rio Grande and Low Flow Conveyance Channel system. The proposed channel system realignment would allow for efficient conveyance of water to Elephant Butte Reservoir, effective valley drainage, and effective sediment management. The proposed changes would also promote the protection and restoration of the riparian and riverine ecosystem in the project area.

The DEIS describes and analyzes the impacts of two alternatives that would realign the Low Flow Conveyance Channel and Rio Grande system to the west side of the Middle Rio Grande Valley. Other alternatives included are the No Action and Discontinue Maintenance Alternatives. The project, as proposed, would be implemented in phases over the next 4 to 11 years, depending upon flow conditions, sediment deposition, and other factors. An adaptive management process would be used to provide a structured but flexible management approach to the construction and maintenance of the realigned channel system.

DATES: A 60–day public review period commences with the publication of this notice. Written comments on the DEIS are due by November 7, 2000, and should be submitted to Mr. Art Coykendall at the address given below. Public hearings on the DEIS will be held during the months of October and November in Socorro, Albuquerque, and Las Cruces, New Mexico. The public hearings schedule is as follows:

- October 30, 2000, 7 to 9 p.m., Holiday Inn Express, 1100 California, N.E., Socorro, New Mexico.
- November 1, 2000, 7 to 9 p.m., Indian Pueblo Cultural Center, 2401 12th Street, N.W., Albuquerque, New Mexico.
- November 2, 2000, 7 to 9 p.m., New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico.

ADDRESSES: Written comments on the DEIS and requests for copies should be addressed to Mr. Art Coykendall, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette Street, NW., Suite 1313, Albuquerque, New Mexico 87102–2162; telephone (505) 248–5351; faxogram (505) 248–5308; e-mail: acoykendall@uc.usbr.gov. The DEIS is also available on the Internet at www.uc.usbr.gov.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the DEIS are also available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102.
- Bureau of Reclamation, Albuquerque Area Office, 505 Marquette Street, NW., Suite 1313, Albuquerque, New Mexico 87102–2162.
- Energy, Minerals and Natural Resources Department, Attention: Jennifer A. Salisbury, Secretary, 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

Libraries

Albuquerque Public Library, Albuquerque

University of New Mexico Library, Albuquerque
Zimmerman Library, Albuquerque
New Mexico State Library, Santa Fe
New Mexico State University Library, Las Cruces
Socorro Public Library, Socorro

FOR FURTHER INFORMATION CONTACT: Mr. Art Coykendall, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette Street, NW., Suite 1313, Albuquerque, New Mexico 87102–2162; telephone (505) 248–5351.

SUPPLEMENTARY INFORMATION: The Flood Control Acts of 1948 and 1950 authorize Reclamation to construct and maintain channel works on the Rio Grande between Velarde, New Mexico, and Caballo Reservoir. These works promote the efficient conveyance of water to Elephant Butte Reservoir. Channel works also assist in meeting water delivery obligations required by interstate compact and international treaty. They also assist in providing reliable valley drainage and contribute to the safe passage of flood waters. To ensure that these project purposes continue to be met effectively, Reclamation has proposed to modify the main channel of the Rio Grande and Low Flow Conveyance Channel system.

Factors prompting a reevaluation of the channel system include changes in the flow of the Rio Grande due to climatic variation and infrastructure changes. Chronic sediment management problems, anticipated reductions in federal funding, and new legal constraints on system operations, such as the Endangered Species Act, are also factors prompting this reevaluation.

Purpose and Need for Action

The purposes of the proposed federal action are to convey water to Elephant Butte Reservoir, maintain effective valley drainage, manage sediment, and protect and promote restoration of the riparian and riverine system to help meet the following needs:

- Fulfill obligations to deliver water to Mexico and as required under interstate water compact;
- Sustain agricultural production;
- Maintain high flow capacity in the river;
- Manage costs of system operation and maintenance; and
- Restore native species habitat.

Hearing Process Information

Oral comments at the hearings will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. All comments will be formally recorded. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the hearing record.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings should be received by Reclamation's Albuquerque Area Office at the address given above no later than November 7, 2000, for inclusion in the hearing record. Under the NEPA process, written and oral comments, received by the due date, are given the same consideration.

Dated: September 1, 2000.

Charles A. Calhoun,

Regional Director.

[FR Doc. 00–23145 Filed 9–7–00; 8:45 am]

BILLING CODE 4310–MN–U

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Allied Waste Industries, Inc. and Republic Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Allied Waste Industrires, Inc., and Repulbic Services, Inc.*, Civil No. 1:00CV 01469 on June 21, 2000. A Competitive Impact Statement was filed on August 15, 2000. The Complaint sought to enjoin the defendants' proposed sales of waste collection assets in the areas of Albany, NY; Augusta, GA; Burlington and Camden Counties, NJ; Clarksville, TN; Columbus, OH; Escambia, Santa Rosa, and Okaloosa counties, Florida; Lakeland, FL; Louisville, KY/Sellersburg, IN; Macon, GA; Memphis, TN; Monmouth County, NJ; Nashville, TN and Norfolk, VA. The Complaint also sought to enjoin the defendants' proposed sales of municipal solid waste disposal assets in the areas of Anderson, IN and New York City, NY. The Complaint alleged that these transactions between Allied and Republic would lessen competition substantially in waste collection and municipal solid waste disposal services in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires, among other things, that (1) Allied divest commercial waste collection operations in the areas of Augusta, GA; Escambia, Santa Rosa, and Okaloosa counties, FL; Memphis, TN; Nashville, TN; and Norfolk, VA: (2) Republic divest commercial waste collection operations in the areas of Columbus, OH; Lakeland, FL; Louisville, KY/Sellersburg, IN; and Macon, GA; (3) Allied divest disposal assets in the area of New York City, New York; and (4) Republic divest disposal assets in the areas of Anderson, IN and Macon, GA. The proposed Final Judgment also requires the defendants to alter their existing contracts and offer new contracts meeting certain conditions for (1) commercial waste collection services in the areas of Albany, NY; Augusta, GA; Burlington and Camden Counties, NJ; Clarksville, TN; Columbus, OH; Escambia, Santa Rosa, and Okaloosa counties, FL; Lakeland, FL; Louisville, KY/Sellersburg, IN; Macon, GA; Monmouth County, NJ; and Nolfolk, VA; and (2) roll-off waste collection services in Macon, GA.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies to be implemented by Allied and Superior. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Republic'' means defendant Republic Services, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Relevant Allied Assets'' means all Relevant Allied Disposal Assets and Relevant Allied Hauling Assets, as further defined below.

E. ''Relevant Allied Disposal Assets'' means, unless otherwise noted, with respect to each transfer station listed and described herein, all of Allied's rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of Allied's rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Allied Disposal Assets, as used herein, includes each of the following properties:

1. Transfer Stations

a. Anderson, IN. Allied's BFI Anderson Transfer Station, located at 201 North Delaware, Anderson, IN 46016.

b. Macon, GA. Allied's S&S Byron Transfer Station, located at 750 Dunbar Road, Byron, GA 31008.

F. ''Relevant Allied Hauling Assets,'' unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and real property and improvements to real property (*i.e.,* buildings and garages). It also includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Allied Hauling Assets (to be held separate by Republic), as used herein, includes the assets in the following locations:

1. Columbus, OH

Allied's front-end and rear-end loader truck small container routes (hereinafter, ''commercial routes'') 31, 51, 54, 91, 92, 96, and 97 that serve the City of Columbus and Franklin and Delaware counties, Ohio;

2. Lakeland, FL

Allied's commercial routes 901 and 904, that serve Polk County, FL; and

3. Macon, GA

Allied's commercial routes 902 and 903 that serve the City of Macon; and Bibb and Jones counties, Georgia.

For purposes of this Hold Separate Stipulation and Order, the Relevant Allied Hauling Assets to be held separate by Republic shall also include the following:

4. Louisville, KY/Sellersburg, IN

Republic's commercial routes 4, 8, 17, 18 and 26 that serve the cities of Louisville, KY and Sellersburg, IN; Jefferson County, KY; and the parts of Floyd and Clark counties, IN abutting Jefferson County, KY.

G. ''Relevant Republic Assets'' means all Relevant Republic Disposal Assets and Relevant Republic Hauling Assets, as further defined below.

H. ''Relevant Republic Disposal Assets'' means Republic's All City Transfer Station, also known as Republic Services of New York II, LLC, located at 246–252 Plymouth Street, New York, New York. Relevant Republic Disposal Assets includes, with respect to the transfer station listed and described herein, all of Republic's rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of Republic's rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

I. ''Relevant Republic Hauling Assets,'' unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and real property and improvements to real property (*i.e.,* buildings and garages). It also includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Republic Hauling Assets (to be divested by Allied), as used herein, includes the assets in the following locations:

1. Augusta, GA

Republic's commercial routes 204 and 238 that serve the City of Augusta, GA: Richmond and Columbia counties, GA; and Aiken County, SC;

2. Gulf Coast, FL

Republic's commercial routes 1, 4 (a Saturday-only route) and 5 that serve Escambia, Santa Rosa and Okaloosa counties, FL, except for those contracts with route 4 customers also being served on a Republic Gulf Coast route not being divested pursuant to this Final Judgment;

3. Memphis, TN

Republic's commercial routes 51, 52 and 53 that serve Shelby County, TN; Desoto County, MS; and Crittendon County, AR;

4. Nashville, TN

Republic's commercial routes 12, 16, 20, 24 and 30 that serve the City of Nashville, TN; and Davidson, Sumner, Williamson, Rutherford, Wilson, the southeastern part of Robertson, and the eastern part of Cheatham counties, TN; and

5. Norfolk, VA

Republic's commercial routes 1, 2, 3 (except for the Virginia Beach municipal contract), 6, 7, 9, and 10, that serve the cities of Chesapeake, Suffolk, Virginia Beach, Norfolk, Poguoson, Newport News and Plymouth, VA; and York, Surry, James City, Southampton, and Isle of Wright counties, VA.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Relevant Allied Assets and Relevant Republic Assets for the purpose of establishing viable competitors in the municipal solid waste (''MSW'') disposal business and the small container commercial waste collection business, to remedy the effects that the United States alleges would otherwise result from the exchange of assets between Allied and Republic. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Allied Assets and Relevant Republic

Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Allied or Republic, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Allied Assets and Relevant Republic Assets as independent, ongoing, economically viable competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from the other operations of Republic, in the case of the Relevant Allied Assets, and from Allied, in the case of the Relevant Republic Asserts. Republic shall not coordinate its service, marketing, negotiation of sales or other business operations with those of any Relevant Allied Asset. Allied shall not coordinate its service, marketing, negotiation of sales or other business operations with those of any Relevant Republic Asset. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Allied Assets and Relevant Republic Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the MSW disposal business and the small container commercial waste collection business; (2) the management of the Relevant Republic Assets will not be influenced by Allied, and the management of the Relevant Allied Assets will not be influenced by Republic; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Republic Asset will be kept separate and apart from Allied's other operations, and the books, records, competitively sensitive sales marketing, and pricing information, and decision-making concerning the Relevant Allied Assets will be kept separate and apart from Republic's other operations. Republic's influence over the Relevant Allied Assets and Allied's influence over the Relevant Republic Assets shall be limited to that necessary to carry out defendants' obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Allied Assets and Relevant Republic Assets, and shall maintain at 1999 or at previously approved levels for 2000, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Allied Assets and Relevant Republic Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Relevant Allied Assets and Relevant Republic Assets as economically viable and competitive ongoing businesses consistent with the requirements of Sections V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Relevant Allied Assets and Relevant Republic Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Allied Assets and Relevant Republic Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Allied Assets or Relevant Republic Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Allied Assets and Relevant Republic Assets.

H. Except in the ordinary course of business or as in otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Allied or Republic employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Allied Asset or a Relevant Republic Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Allied Assets and Relevant Republic

Assets are divested pursuant to the terms of the Final Judgment, the Relevant Republic Assets shall be managed by Richard J. Wojahn and the Relevant Allied Assets shall be managed by Raul Rodriguez, Jr. Messrs. Wojahn and Rodriguez shall have complete managerial responsibility for the Relevant Allied Assets and Relevant Republic Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that either Mr. Wojahn or Mr. Rodriquez is unable to perform this duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

For Plaintiff United States of America
David R. Bickel, DC Bar # 393409,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–1168.
For Defendant Allied Waste Industries, Inc.
Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971.
For Defendant Republic Services, Inc.
Paul B. Hewitt,
Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Ave., N.W., Suite 400, Washington, DC 20036, (202) 887–4000.

Dated: June 21, 2000.

Order

It Is So Ordered On This 21st Day of June, 2000.

Richard M. Urbina,
United States District Judge.

Final Judgment

WHEREAS, plaintiff, the United States of America, having filed its Complaint in this action on June, 2000, and plaintiff and defendants, Allied Waste Services, Inc. (''Allied'') and Republic Service, Inc. (''Republic''), by their respective attorneys, having consented to the entry of this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Allied Assets and Relevant Republic Assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or other injunctive provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Relevant Allied Assets or Relevant Republic Assets.

B. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Disposal'' means the business of disposing of waste into approved disposal sites.

D. ''Hauling'' means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

E. ''Landfill'' means a waste management facility where waste is placed into the land.

F. ''MSW'' means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

G. ''Relevant Allied Assets'' means all Relevant Allied Disposal Assets and Relevant Allied Hauling Assets, as further defined below.

H. ''Relevant Allied Disposal Assets'' means, with respect to each transfer station listed and described herein, all of Allied's rights, titles and interests in any tangible assets, including all fee and leasehold and renewal rights in the listed transfer station; the garage and related facilities; offices; all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all of Allied's rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Allied Disposal Assets, as used herein, includes each of the following properties:

1. Anderson, IN

Allied's BFI Transfer Station, located at 201 North Delaware, Anderson, IN 46016; and

2. Macon, GA

Allied's S&S Byron Transfer Station, located at 750 Dunbar Road, Byron, GA 31008.

I. ''Relevant Allied Hauling Assets,'' means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.*, buildings and garages). It also includes all intangible assets, including hauling-related customer lists, contracts, leasehold interests, and accounts.

Relevant Allied Hauling Assets, as used herein, includes the assets in the following locations:

1. Columbus, OH

Allied's front-end and rear-end loader truck small container routes (hereinafter, ''commercial routes'') 31, 51, 54, 91, 92, 96 and 97 that serve the

City of Columbus; and Franklin and Delaware counties, Ohio.

2. Lakeland, FL

Allied's commercial routes 901 and 904 that serve Polk County, FL.

3. Macon, GA

Allied's commercial routes 902 and 903 that serve the City of Macon; and Bibb and Jones counties, Georgia.

J. ''Relevant Republic Assets'' means all Relevant Republic Disposal Assets and Relevant Republic Hauling Assets, as further defined below.

K. ''Relevant Republic Disposal Assets'' means Republic's All City Transfer Station, also known as Republic Services of New York II, LLC, located at 246–252 Plymouth Street, New York, New York. Relevant Republic Disposal Assets include all of Republic's rights, titles and interest in any tangible assets, including all fee and leasehold and renewal rights, in the transfer station; the garage and related facilities; offices, all related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all Republic's rights, titles and interests in any intangible assets, including all customer lists, contracts, and accounts, or options to purchase any adjoining property.

L. ''Relevant Republic Hauling Assets'' means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.,* buildings and garages). It also includes all intangible assets, including hauling-related customer lists, contracts, leasehold interest, and accounts.

Relevant Republic Hauling Assets, as used herein, includes the assets in the following locations:

1. Augusta, GA

Republic's commercial routes 204 and 238 that serve the City of Augusta; GA; Richmond and Columbia counties, GA; and Aiken County, SC.

2. Gulf Coast, FL

Republic's commercial routes 1, 4 (a Saturday-only route), and 5 that serve Escambia, Santa Rosa and Okaloosa counties, FL, except for those contracts with route 4 customers also being served on a Republic Gulf Coast route not being divested pursuant to this Final Judgment;

3. Louisville, KY/Sellersburg, IN

Republic's commercial routes 4, 8, 17, 18, and 26 (to be divested by Republic) that serve the cities of Louisville, KY and Sellersburg, IN; Jefferson County, KY; and the parts of Floyd and Clark counties, IN abutting Jefferson County, KY.

4. Memphis, TN

Republic's comemrcial routes 51, 52 and 53 that serve Shelby County, TN; Desoto County, MS; and Crittenden County, AK.

5. Nashville, TN

Republic's commercial routes 12, 16, 20, 24 and 30 that serve the City of Nashville, TN; and Davidson, Sumner, Williamson, Rutherford, Wilson, the southeastern part of Robertson, and the eastern part of Cheatham counties, TN; and

6. Norfolk, VA

Republic's commercial routes 1, 2, 3 (except for the Virginia Beach municipal contract), 6, 7, 9, and 10 that serve the cities of Chesapeake, Suffolk, Virginia Beach, Norfolk, Poquoson, Newport News and Portsmouth, VA; and York, Surry, James City, Southampton, and Isle of Wright counties, VA subject to the following conditions of sale: the new purchaser of the specified hauling assets must obtain a disposal agreement satisfactory to the United States in advance of any divestiture approval from the United States. If the United States, in its sole discretion, deems it necessary for additional tonnages of processible waste to be divested by Allied in the Norfolk area, Allied agrees to supplement the assets already offered for sale with additional waste customers whose total tonnages of processible waste exceed 800 tons per month. Any supplemental asset divestiture by Allied will be limited to no more than one (1) additional front-end loader route, plus the accounts of other Allied waste customers whose total processible waste, in combination with the waste generated from any additional front-end loader route, shall equal 800 tons or more of processible waste per month. The supplemental waste customer accounts shall not be covered by any separate disposal agreement. The supplemental customer accounts need not relate to small container waste.

M. ''Republic'' means defendant Republic Services, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

N. ''Small container commercial waste collection service'' means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (*i.e.,* a small container with one to ten cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front- or read-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.,* stores and restaurants).

III. Applicability

A. This Final Judgment applies to Allied and Republic, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of lesser business units that include defendants' Relevant Allied Assets or Relevant Republic Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Allied Assets and Relevant Republic Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to sixty (60) calendar days, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Relevant Allied Assets and the Relevant Republic Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Allied Assets and Relevant Republic Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Relevant Allied Assets or Relevant Republic Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Allied Assets and Relevant Republic Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers and the United States information relating to the personnel involved in the operation and management of the Relevant Allied Assets and Relevant Republic Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer[s] to employ any defendant employee whose primary responsibility is the operation or management of the Relevant Allied Assets or the Relevant Republic Assets.

D. Defendants shall permit prospective Acquirers of the Relevant Allied Assets and Relevant Republic Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. With the exception of the facilities described in Section II (K), defendants shall warrant to all Acquirers of the Relevant Allied Assets and Relevant Republic Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Relevant Allied Assets and Relevant Republic Assets.

G. Defendants shall warrant to the Acquirer[s] of the Relevant Allied Assets and Relevant Republic Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Relevant Allied Assets and Relevant Republic Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Relevant Allied Assets and Relevant Republic Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Relevant Allied Assets and Relevant Republic Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Relevant Allied Assets and Relevant Republic Assets can and will be used by the Acquirer(s) as part of a viable, ongoing waste disposal or hauling business. Divestiture of the Relevant Allied Assets and Relevant Republic Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Relevant Allied Assets and Relevant Republic Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers), that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the waste disposal or hauling business; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Allied or Republic gives Allied or Republic the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Relevant Allied Assets and Relevant Republic Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Allied Assets and Relevant Republic Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Allied Assets and Relevant Republic Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer[s] acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Allied Assets and Relevant Republic Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to

acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Allied Assets and Relevant Republic Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Allied Assets and Relevant Republic Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's Judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Allied Assets and Relevant Republic Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture[s] has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Allied Assets and Relevant Republic Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Relevant Allied Assets and Relevant Republic Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Relevant Allied Assets and Relevant Republic Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at plaintiff's option demand defendants provide copies of, all books, ledgers, accounts, records and documents in the possession or control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the interviewees' reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Relevant Allied Assets or Relevant Republic Assets during the term of this Final Judgment.

XII. Revisions to Contracts

A. Allied and Republic shall alter the contracts each uses with its small container solid waste commercial customers in each of the markets specified below to the form contained in paragraph XII (B) below.

B. In each of the markets specified below and for the defendant acquiring the assets as indicated, Allied or Republic shall offer contracts to all new small container solid waste commercial customers as well as to existing customers that sign new contracts for small container solid waste commercial service effective on or after the date that one defendant acquires the other's assets in accordance with the following conditions. No contract shall:

(1) have an initial term longer than two (2) years;

(2) have any renewal term longer than one (1) year;

(3) require that the Customer give Defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

(4) require that the Customer pay liquidated damages in excess of three times its average monthly charge during the first year the Customer has had service with the Defendant; and

(5) require that the Customer pay liquidated damages in excess of two times its average monthly charge after the first year the Customer has had service with the Defendant.

The contract attached as Exhibit A would satisfy the above conditions. The applicable defendant shall offer such contracts to all other current small container solid waste commercial customers in the respective markets detailed below on or before December 1, 2000:

Defendant	Cities	Counties or areas
Allied	Albany, NY	Albany, Schenectady, Saratoga, and Rensselaer counties, NY.
Allied	Augusta, GA	Richmond and Columbia counties, GA; and Aiken County, SC.
Allied	Clarksville, TN	Montgomery, Dickson, Cheatham, and Robertson counties, TN.
Republic	Columbus, OH	Franklin and Delaware counties, OH.
Allied	Gulf Coast, FL	Escambia, Santa Rosa, and Okaloosa counties, FL.
Republic	Lakeland, FL	Polk County, FL.
Republic	Louisville, KY/Sellersberg, IN	Jefferson County, KY; and Floyd and Clark counties, IN.
Republic	Macon, GA	Bibb, Houston, Peach, Jones and Monroe counties, GA.
Republic	Marlboro, NJ	Monmouth County, NJ.
Republic	Mt. Laurel, NJ	Burlington and Camden counties, NJ.
Allied	Norfolk, VA	Chesapeake, Suffolk, Virginia Beach, Norfolk, Poquoson, Newport News, and Portsmouth, and York, Surry, James City, Southampton, and Isle of Wight counties, VA.

The defendant acquiring small container assets in each specified area agrees that it will not attempt to enforce any contract term affecting small container customers in the specified area that conflicts with or is inconsistent with the above terms, even if those customers choose not to sign a contract with the new terms.

C. In accordance with paragraph XII (D) below, Republic shall alter the contracts it uses with the roll-off customers in Bibb, Houston, Peach, Jones and Monroe counties, Georgia, except those customers that regularly rent or lease compactors from Republic for their roll-off containers.

D. The revised roll-off contracts shall comply with the following conditions:

(1) No contract shall contain an initial term of greater than three (3) years.

(2) During the first year that the company is a customer of Republic, the customer may be forced to pay liquidated damages of no more than six (6) times its prior average monthly charges if the contract is terminated by the customer in manner inconsistent with the termination provisions contained in the agreement. During the second year that the company is a customer of Republic, the customer may be forced to pay liquidated damages of no more than four (4) times its prior average monthly charges if the contract is terminated by the customer in a manner inconsistent with the termination provisions contained in the agreement. After the company is a customer of Republic for two years, the customer may be forced to pay liquidated damages of no more than two (2) times its prior average monthly charges if the contract is terminated by the customer in a manner inconsistent with the termination provisions contained in the agreement.

(3) No roll-off contract may have automatic renewals for terms of more than one (1) year.

E. Republic shall offer roll-off contracts in compliance with these requirements to all new roll-off customers, except those customers that regularly rent or lease one or more compactors from Republic for their roll-off containers (hereinafter referred to as ''compactor customers''), as well as to existing roll-off customers, except for compactor customers, that sign new contracts for non-compactor service effective on or after the date that Republic acquires Allied's Macon, Georgia assets in accordance with the terms of this Final Judgment. Defendant

shall further offer such revised contracts to all of their other non-compactor roll-off customers in Bibb, Houston, Peach, Jones and Monroe counties, Georgia on or before December 1, 2000. Republic agrees that it will not attempt to enforce any term of its current contracts with roll-off contract customers, except for compactor customers, in the Macon area that is inconsistent with the conditions specified above, even if its customers, except for compactor customers, choose not to sign a contract with the new terms.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date:_____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

EXHIBIT A

Contract for Solid Waste Services

Date:_____

Service location (which Business Name shall be deem to include all locations to which the identified location is relocated or reestablished.)

_____

_____

Business Name

_____

Street No. & Name

_____

City Zip

_____

Telephone

_____

Fax

Dear_____

Thank you for choosing [Name of Company] as your waste services company. Our aim is to provide this essential service so responsibly and dependably that you don't need to give it a second thought. We will do our best to keep you satisfied and want you to tell us when we don't. This contract will continue in effect for two years and will renew for successive one-year periods unless terminated in writing at least 30 days prior to the end of a period. You may also terminate when appropriate under ''Our Guaranty.''

Our Mission

Our Mission is to provide the highest quality waste collection, transportation, processing disposal and related services to both public and private customers worldwide. We will carry out our Mission efficiently, safely and in an environmentally responsible manner with respect for the role of government in protecting the public interest.

Our Guaranty

We guarantee the quality of our waste services. If our services do not measure up to the standards described in this contract, and we do not correct the problem within 48 hours (excluding Sundays) after we receive written notice from you (unless the problem is caused by circumstances outside our reasonable control), you may terminate our services and this contract with penalty.

Our Responsibilities

1. The specific services we will provide, and the schedule and initial charges for each service, are listed below. We will give at least 30 days written notice if we increase our charges, which we reserve the right to do from time to time proportionately in connection with increases in cost for disposal, longer transportation distances, fuel, regulatory compliance, taxes, and increases in average weight per container yard. In connection with increases in the cost of disposal, we frequently do not receive advance notice of increases. We reserve the right to pass on to you such increases without 30 days advance notice but will give you as much notice as possible. Customers will be provided in writing with the formula used in calculating increases based upon increases in disposal fees. We will advise Customer in writing of the reason for the increase and do our best to satisfy any concerns you have about any increases. Any other type of price increase requires your written consent.

2. Our employees will be friendly, courteous and responsive. They will, in writing, have gone through a customer satisfaction and safety training program, and will provide quality, professional service.

3. We will provide and maintain the equipment you need for the deposit and other handling of the materials that we have agreed to pick up from you.

4. We are committed to making every pick-up as scheduled, but if we are unable to do so, we will make every effort to let you know in advance and reschedule it within 24 hours.

Your Responsibilities

1. You agree that [Name of Company] will provide the specified services for all your nonhazardous waste. You agree not to deposit any radioactive, volatile, corrosive, highly flammable, explosive, infectious, toxic or hazardous waste in our equipment and will indemnify us from resulting liabilities if you do. Anything else that is deposited in our truck becomes our property at that time.

2. You agree to provide us with access to our equipment over surfaces that can sustain the weight and operation of our vehicles. You also agree not to overload (by weight or volume), abuse or move our equipment, but if it does need to be moved, you will call us.

3. You agree to use your best efforts to keep people from coming into contact with our equipment other than those who are authorized and trained to use. it.

4. You agree to pay our bills monthly, within ten days after they are received. We reserve the right to charge a late fee on all past due payments.

5. If you terminate this contract during your first 10 months as an [Name of Company] customer (other than as provided under ''Our Guaranty''), you agree to pay us, as liquidated damages and not as a penalty, three times your prior average monthly charges. If you terminate after you have been an [Name of Company] customer for more than 10 months (other than as provided under ''Our Guaranty''), you agree to pay us as liquidated damages an amount equal to two months average charges.

We look forward to a long-lasting relationship; so please let us know if you have any problems or concerns as they occur and give us the opportunity to provide solutions. As we deliver our services, we will continuously look for ways to keep you satisfied.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc. and Republic Services, Inc. by placing a copy of this Hold Separate Stipulation and Order and proposed Final Judgment in the U.S. Mail, postage prepaid directed to each of the parties in this matter, on this 21st day of June, 2000.

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith, Esq.,

Jones Day Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

Counsel for Defendant Republic Services, Inc.

Paul B. Hewitt, Esq.,

Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036

David R. Bickel,

DC Bar #393409, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, 202–307–1168.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on June 21, 2000, seeking to enjoin an exchange of certain waste-hauling and disposal assets by

Allied Waste Industries, Inc. (''Allied'') and Republic Services, Inc. (''Republic''). Allied and Republic had entered into purchase agreements pursuant to which the companies would exchange assets in a number of market areas in the United States. The Complaint alleges that the likely effects of these asset exchanges would be to substantially lessen competition for waste collection and disposal services in several markets in violation of Section 7 of the Clayton Act. This loss of competition would result in consumers paying higher prices and receiving fewer services for the collection and disposal of waste.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment which are designed to eliminate the anticompetitive effects of the acquisitions. Under the proposed Final Judgment, which is explained more fully below, the defendants are required within 120 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as viable business operations, certain waste-hauling and disposal assets. Under the terms of the Hold Separate Stipulation and Order, the defendants are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from the defendants' other assets and businesses. In addition to these asset divestitures, the proposed Final Judgment also requires the defendants to comply with certain conditions in their customer contracts in several identified areas.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transactions

Allied, with revenues in 1999 of approximately $6 billion, is the nation's second largest waste collection and disposal company, operating throughout the United States. Republic, with 1998 revenues of approximately $1.8 billion, is the nation's third largest waste collection and disposal company. On July 28 and October 7, 1999, Allied and Republic entered into separate asset purchase agreements in which they agreed to exchange certain waste-hauling and disposal assets. The proposed transactions, identified below, would lessen competition substantially in waste collection and/or disposal services: (1) Allied's acquisition of hauling assets in Albany, New York; (2) Allied's acquisition of hauling assets in Augusta, Georgia; (3) Allied's acquisition of disposal assets in New York, New York; (5) Allied's acquisition of hauling assets in Norfolk, Virginia; (6) Allied's acquisition of hauling assets in Okaloosa, Escambia and Santa Rosa counties, Florida (''Gulf Coast, Florida''); (7) Republic's acquisition of disposal assets in Anderson, Indiana; (8) Republic's acquisition of hauling assets in Columbus, Ohio; (9) Republic's acquisition of hauling assets in Lakeland, Florida; (10) Republic's acquisition of hauling assets in Louisville, Kentucky and Sellersburg, Indiana; (11) Republic's acquisition of hauling and disposal assets in Macon, Georgia; and (12) Republic's acquisition of hauling assets in Monmouth, Burlington and Camden counties, New Jersey. These acquisitions are the subject of the Complaint and proposed Final Judgment filed by the United States on June 21, 2000.

B. The Competitive Effects of the Transactions

Waste collection firms, or ''haulers,'' contract to collect municipal solid waste (''MSW'') from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.,* transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. Allied and Superior compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transactions on Competition in Small Container Commercial Waste Collection Service

a. Small Container Commercial Waste Collection

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.,* stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and generally use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage and front-end loader vehicles commonly used for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (*e.g.,* residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, these firms use different waste storage equipment (*e.g.,* garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.,* rear-load, side-load or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. Thus, the Complaint alleges that the provision of small container commercial waste collection routes. Thus, the Complaint alleges that the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisitions.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying this analysis, the Complaint alleges that the areas of Albany, New York; Augusta, Georgia; Burlington and Camden counties, New Jersey; Clarksville, Tennessee; Columbus, Ohio; Gulf Coast, Florida; Lakeland, Florida; Louisville, Kentucky and Sellersburg, Indiana; Macon, Georgia; Memphis,

Tennessee; Monmouth County, New Jersey; Nashville, Tennessee; and Norfolk, Virginia constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of Allied and Republic in the provision of small container commercial waste collection services.

There are significant entry barriers into small container commercial waste collection. An efficient route usually handles 80 or more containers/customers each day. As most customers have collections once or twice a week, a new entrant must have several hundred customers in close proximity to construct an efficient route. However, the common use of long-term self-renewing ''evergreen'' contracts by existing commercial waste collection firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. These contracts often run for several years and frequently have high liquidated damage terms which make it costly to a customer who wishes to change its collection service without giving proper notice. When giving proper notice, the customer must often inform the firm in writing 60 days before the contract renews. This time period allows the incumbent firm an opportunity to react to a prospective entrant's solicitation to that customer. The incumbent firm can inquire why the customer wishes to change its service, and if a prospective entrant has offered a lower price, the incumbent can lower its price to retain the customer. This can result in price discrimination; *i.e.,* an incumbent firm can selectively (and temporarily) charge unbeatably low prices to some customers targeted by entrants, a tactic that would strongly inhibit a would-be entrant from competing for such accounts, which, if won, may be unprofitable to serve, and would limit its ability to build an efficient route. Because of these factors, a new entrant may find it difficult to compete by offering its services at pre-entry price levels comparable to the incumbent.

The need for route density, the use of long-term evergreen contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant to entry to new firms, which will likely be forced to compete a lower than pre-entry price levels. Such barriers in the market for commercial small container waste collection have allowed incumbent firms to raise prices successfully.

b. Anticompetitive Effects in Small Container Collection Service Markets

(1) Memphis and Nashville Areas. In the Memphis and Nashville, Tennessee market areas, Allied is the acquiring party. Total market revenues for commercial small container waste collection are over 425 million in Memphis and about $31 million in Nashville. Currently, Allied already has a substantial share of the commercial small container collection market in both Memphis and Nashville. In Memphis, the proposed acquisition would reduce from four to three the number of significant firms that compete in small container commercial waste collection service, and in Nashville, it would reduce the number of significant competitors from three to two. After the acquisition, Allied would control roughly 69% of the commercial waste collection market in Memphis, and over 50% of the market in Nashville. In both cities, after the acquisition, two firms would control over 90% of the market.

(2) Lakeland, Macon, Augusta, Norfolk, Columbus, Gulf Coast, and Louisville/Sellersburg Areas. In Lakeland, Florida and Macon, Georgia, the acquisition would reduce from two to one the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Allied would control about 98% of the market in Lakeland, and Republic would control over 85% of the small container commercial market in Macon. In each market, the annual revenues derived from commercial waste collection are about $5 million.

In Augusta, Georgia and Norfolk, Virginia, the acquisition would reduce from three to two the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Allied would control over 40% of the market in Augusta, and over 55% of the market in Norfolk. The annual revenues from commercial waste collection are about $8 million in Augusta and about $28 million in Norfolk.

In the Columbus, Ohio; Gulf Coast, Florida; and Louisville, Kentucky/Sellersburg, Indiana areas, the acquisition would reduce from four to three the number of significant firms that compete in the collection of small container commercial waste. After the acquisition, Republic would control over 50%, and two firms over 80%, of the small container commercial waste hauling market in Columbus, which has annual revenues of about $29 million. In Gulf Coast, Florida, after the acquisition, Allied would control over 50%, and two firms more than 90%, of the commercial market, which has annual revenues of about $10 million. In Louisville/Sellersburg, Republic would control over 50%, and two firms would control about 90%, of the market after the acquisition, in a market which has annual revenues exceeding $22 million.

(3) Clarksville, Albany and New Jersey Areas. The acquisition would reduce the number of significant competitors in small container commercial waste collection service from five to four in Clarksville, Tennessee; four to three in Albany, New York and Monmouth County, New Jersey, and from three to two in Burlington, and Camden counties, New Jersey. In Clarksville, Tennessee, Allied would control over 40%, and two firms over 65%, of the market, which has annual revenues of about $5 million. In Albany, Allied would control over 35%, and two firms over 80%, of the market, which has annual revenues of about $17 million. In Monmouth County, New Jersey, Republic would control about 40%, and three firms over 75% of the market, which has annual revenues of about $18 million. In Burlington and Camden counties, New Jersey, Republic would control about 31%, and two firms over 80%, of the market, which has annual revenues exceeding $24 million.

The Complaint alleges that a combination of Allied and Republic in these markets would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The acquisitions would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. New entry into these markets would be difficult, time-consuming, and is unlikely to be sufficient to constrain any post-merger price increase.

2. The Effects of the Transactions on Competition in Roll-Off Waste Collection Service

a. Roll-Off Waste Collection Service

Roll-off waste collection service is the collection of large volumes and/or bulkier items of waste from sources such as construction sites or industrial plants. Because of its characteristics (*e.g.* construction debris) and volume, roll-off waste is deposited by the customer/generator into a disposal container (usually 20 to 40 cubic yards in size) which is larger than those routinely used in small container commercial collection (usually one to 10 cubic yards in size). When filled, the roll-off container is picked up by roll-off

trucks, which are specifically designed for roll-off waste collection, and driven to a nearby disposal site, where the container's contents are disposed.

Unlike most small container commercial service vehicles, which routinely employ compaction systems on the truck to increase storage capacity and can empty numerous small containers located on a schedule route before being driven to a disposal site, roll-off vehicles have no compaction system on board and are designed to carry only one large container at a time to a disposal site. As a result, roll-off waste collection is often performed on an ''on call'' basis, rather than as part of any route, and pricing is primarily influenced by the distance between the customer's location, the hauler's location, and the disposal site.

The differences in size, type, and volumes of roll-off waste and in the equipment used to collect it distinguish roll-off waste collection from all other waste collection services. These differences mean that roll-off waste collection firms can profitably increase their charges for roll-off waste collection services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, the Complaint alleges that the provision of roll-off waste collection service is a line of commerce, or relevant service, for purposes of analyzing the effects of the acquisitions.

Roll-off waste collection services are generally provided in localized areas because a roll-off truck cannot be efficiently or profitably driven significantly longer distances than those driven by a competitor to collect and dispose of the waste. It is economically impractical for a roll-off waste collection firm to serve metropolitan areas from a distant base. Roll-off waste haulers, therefore, generally establish garages and related facilities within each major local area served.

The Complaint alleges that the Macon, Georgia area is a section of the country, or relevant geographic market, for purposes of analyzing the effects of the acquisitions in the provision of roll-off waste collection service. In this area, local roll-off waste collection firms can profitably increase charges to local customers without losing significant sales to more distant competitors.

A barrier to entry with roll-off waste collection is the nature of the contracts with customers used by some market participants. They are often long-term evergreen contracts which renew automatically unless canceled during a short window, with liquidated damages clauses. These contracts restrict the ability of a new or an existing firm to compete for customers. Entry into roll-off waste collection is also difficult where the major competitors in roll-off collection control the local disposal facilities because new entrants will be at a disadvantage in obtaining access to competitive disposal sites.

b. Anticompetitive Effects in the Macon, GA Area for Roll-Off Collection Service

In the Macon, Georgia area, the acquisition by Republic would combine the two largest firms that compete in roll-off waste collection service. After the acquisition, Republic would control over 60% of the roll-off hauling market, which has annual revenues of about $8 million. In addition, Republic already controls the most accessible landfill in the area. Its acquisition of Allied's transfer station would likely put its roll-off collection competitors at an even greater competitive disadvantage because it would have the ability to raise prices selectively to its roll-off collection competitors at two of the area's best disposal facilities.

The Complaint alleges that a combination of Allied and Republic would likely lead to an increase in prices charged to roll-off waste collection customers in the Macon, Georgia area. The acquisition would diminish competition by the loss of competition between the two largest firms engaging in roll-off waste collection service. Because of the limited disposal options and use of long-term evergreen contracts with a large number of customers, new entry in the area would be difficult and unlikely to be sufficient to constrain any post-merger price increase.

3. The Effects of the Transactions on Competition in the Disposal of Municipal Solid Waste

a. Municipal Solid Waste

Municipal solid waste (MSW) is solid putrescible waste generated by households and commercial establishments. A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can be sent for disposal only to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. In many cases, landfills or incinerators may not be located close to where the waste is generated. In such instances, the waste is brought to a nearby transfer station by collection trucks where it is compacted and combined with other waste and transported to the more distant disposal site.

There are no good substitutes for MSW disposal. Firms that compete in the disposal of MSW can profitably increase their charges to haulers of MSW without losing significant sales to any other firms. Thus, for purposes of antitrust analysis, the disposal of MSW constitutes a line of commerce, or relevant service, for purposes of analyzing the acquisitions.

The disposal of MSW generally occurs in localized markets. The Complaint alleges that the Anderson, Indiana and New York City, New York (defined as the Borough of Brooklyn in the Complaint) areas each constitute sections of the country, or relevant geographic markets, for purposes of assessing the competitive effects of the transaction. Virtually all of the MSW generated in each of these areas is disposed of in local transfer stations. Firms that compete in the disposal of MSW generated in the Anderson or New York City areas can profitably increase their charges for MSW disposal without losing significant sales to more distant disposal sites.

There are significant barriers to entry in MSW disposal. Obtaining a permit to construct a new disposal facility or expand an existing one is a costly and time consuming process, which typically takes many years to conclude. Local public opposition often makes it more difficult and costly, and increases the time and uncertainty of successfully permitting a facility. In the Anderson, Indiana and New York City, New York areas, entry by any new MSW disposal facility would be an extremely costly and time-consuming process, and unlikely to prevent market incumbents from significantly raising prices for the disposal of MSW following the acquisition.

b. Anticompetitive Effects in Anderson, Indiana and New York City, New York areas for Disposal of Municipal Solid Waste

In the Anderson, Indiana area, almost all of the MSW generated is disposed of in one of three transfer stations. These three transfer stations are currently owned by Allied, Republic and another competitor. The proposed acquisition would reduce from three to two the number of significant competitors for the disposal of MSW. After the acquisition, Republic would own two of the three transfer stations, which together would control in excess of 65 percent of the MSW disposal market,

which has annual revenues in excess of $3 million.

In the New York City area, the acquisition would reduce from five to four the number of significant firms competing to dispose of MSW. After the acquisition, Allied would control roughly 30 percent—and two firms about 66 percent—of the New York City area MSW disposal market, which has annual revenues of about $40 million.

The Complaint alleges that a combination of Allied and Republic in Anderson, Indiana and New York City, New York would likely lead to an increase in prices for disposal of MSW. The acquisitions would diminish competition in MSW disposal by eliminating actual and potential competition between Allied and Republic in disposal of MSW in these areas and enabling the remaining firms to engage more easily in coordinated pricing. New entry into these markets would be difficult, time consuming and unlikely to be sufficient to constrain any post merger price increases.

III. Explanation of the Proposed Final Judgment

A. Small Container Commercial and Roll-Off Waste Collection Service

The divestiture and contract provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the market areas identified in the Complaint by establishing a new, independent and economically viable competitor in each of those markets and/or reducing the barriers to entry and expansion that the evergreen contracts currently in use raise. The proposed Final Judgment requires defendants, within 120 days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business or businesses, small container commercial waste collections assets (*e.g.*, routes, trucks, containers, and customer lists) in the market areas of Augusta, GA; Columbus; OH; Gulf Coast, FL; Lakeland, FL; Louisville, KY/Sellersburg, IN; Macon, GA; Memphis, TN; Nashville, TN; and Norfolk, VA. On or before December 1, 2000, the proposed Final Judgment also requires the defendants to alter the contracts each uses with its existing and new small container solid waste commercial customers in the market areas of Albany, NY; Augusta, GA; Clarksville, TN; Columbus, OH; Gulf Coast, FL; Lakeland, FL; Louisville, KY/Sellersburg, IN; Macon, GA; Norfolk, VA; Burlington and Camden counties, NJ; and Monmouth County, NJ. On or before that same date, defendant Republic is required to alter the contracts it uses with roll-off customers in the five counties in the Macon, Georgia area. The assets to be divested must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in each relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestitures within the above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that the defendant affected will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish divestitures. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

1. Memphis and Nashville Areas

The divestiture provisions of the proposed Final Judgment will fully eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the Memphis and Nashville, Tennessee areas by divesting all of the assets being acquired to a new, independent and economically viable competitor in each of those markets. The relief sought in the Memphis and Nashville areas will maintain the pre-acquisition structure of each market with no increase in concentration and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

2. Lakeland, Macon, Augusta, Gulf Coast, Norfolk, Columbus, and Louisville/Sellersburg Areas

In these market areas, the Department of Justice determined that competition would be best maintained by obtaining a combination of divestiture and contract relief. The Department's experience after many years of investigating this industry is that contract relief is significant because it lowers entry barriers and is effective at enabling smaller competitors to grow and new competitors to enter. The divestiture relief requires certain small container commercial routes to be divested in each market. In Macon, Georgia, the transfer station is also being divested as attendant to the small container routes and to facilitate disposal of the waste by the purchaser of the divested routes.

In each case the divestiture that has been agreed to is of a size that will create a substantial competitor capable of competing immediately in the market. The divestitures are augmented by decree provisions that obligate the acquiring company to alter all of its contracts with its commercial small container customers to provide terms that are less restrictive in terms of the length of the contracts, the renewal provisions, and the liquidated damages for a customer who wishes to change its service. This contract relief will make it easier for customers to consider competitive alternatives, easier for existing small firms to compete and expand in the future, and will make it more difficult for incumbent firms to price discriminate successfully. The contract provisions also make it easier for new firms to enter a market and raise the prospect that the markets will become less concentrated and more competitive than they were pre-acquisition. In Macon, Georgia, similar contract relief is also required for roll-off waste collection. This relief will make it easier for smaller firms to compete for customers under contract with incumbent collection firms.

a. Norfolk, Columbus and Louisville/Sellersburg Areas

In these market areas (Norfolk, VA; Columbus, OH; and Louisville, KY/Sellersburg, IN), the market shares of the acquiring firm before the acquisition were not as great as in Memphis and Nashville, or there were more market participants. The divestitures required in each market enable a new competitor to restore the competition that otherwise would have been lost. The purchasers of the assets to be divested in each market will have routes producing over two

million dollars in annual sales and at least a 10% market share from those assets.

In Louisville and Columbus, where Republic is the acquiring company, there are two other significant competitors, one large and one small, and several disposal options. With Republic implementing the contract relief specified in the proposed Final Judgment, the purchaser of the divested assets, and other competitors, should be able to gain customers more easily if Republic seeks to raise prices in these markets. In Norfolk, where Allied is the acquiring company, there is only one other significant competitor, but the divestiture creates a substantial competitor and represents over 70% of the open commercial work being acquired from Republic (in addition to certain municipal work). One reason why the Norfolk market has few significant competitors is because the major disposal option in the area has a high volume threshold for a meaningful discount. Only the defendants and the other large competitor have been able to qualify for this discount. The amount of assets required to be divested will make it easer for the purchasing firm to apply for this or a similar disposal discount. The proposed Final Judgment provides that Allied will divest additional customers with acceptable waste if necessary for the purchaser to qualify for this discount. Contract relief should make it easier for the divested firm and other competitors to maintain efficient routes and gain new customers should Allied raise prices.

b. Augusta and Gulf Coast Areas

In these two markets (Augusta, GA and Gulf Cost, FL), the market is small, the acquired firm is significantly smaller than the acquiring firm, and there is another significant competitor. Divestitures with contract relief are desirable in these markets as they will both create a new competitor and help it and other competitors to compete in the market.

In Augusta, where Allied is acquiring assets from Republic, disposal is provided by municipally owned facilities. With the divestiture and contract relief, the existing competitors will be better able to compete because it will be easier for them to expand and gain new customers.

In the Gulf Coast, where Allied is also the acquiring company, disposal is provided by municipally owned facilities. There is also a public company that competes in the market which is constrained in its ability to compete by restrictive long-term contracts used by the defendants. The contract relief provisions in the proposed Final Judgment should help it—and the owner of the divested assets—to compete by making it easier for customers to change collection companies.

c. Lakeland and Macon Areas

In these two areas (Lakeland, FL and Macon, GA), the acquisitions result in market shares greater than those in Memphis and Nashville, but other factors make the partial divestiture obtained and contract relief a better remedy than full divestiture. In both markets, the purchaser of the divested assets will become a significant competitor with over 20% of the open commercial work in the market.

In the Lakeland area, most of the cities are franchised. Haulers in nearby counties and the cities indicated that the merger was unlikely to effect prices for these franchises because haulers in adjacent counties could compete for that work. Administrators of Polk County expect the County will be franchising the remaining areas in the county. Under franchising, the municipality or other franchising authority solicits bids for all of the commercial work in an area so that setting up a route is not difficult and a newcomer can compete with an incumbent company in the bidding process. The divestiture involved requires Republic to divest two of the three routes being acquired from Allied that currently do non-franchised work. The purchaser of the divested asset will have over 20% of the open market and the contract relief should make it easier for it to expand or for firms in neighboring counties to enter if prices are raised by Republic. The major disposal site in the county is controlled by the county, so that no firm has a disposal advantage.

In the Macon, Georgia area, Republic is being required to divest a transfer station and two of the four small container commercial routes being acquired from Allied. Republic and Allied control the two best disposal options in the market. Divesting the transfer station will assist competition by providing a disposal option not controlled by the major competitor. Republic agreed to provide contract relief in Macon for roll-off service as well as commercial service. Small firms often enter an area by starting to provide roll-off service. These firms are in a position to enter the commercial market. by making it easier for roll-off companies to succeed and providing a good disposal option, contract relief should make it easier for the divested firm to expand or new entrants to create an efficient small container route if Republic raises prices.

3. Albany; Clarksville; and the New Jersey Area

In Albany, New York; Clarksville, Tennessee; and the two New Jersey areas (Burlington/Camden counties and Monmouth County) the market share after the transaction created a competitive problem but not one which was as substantial as the market areas above. In all of these markets, the post-acquisition market concentration or change in concentration from the acquisition was lower than the other market areas. In each market, except Clarksville (which has the lowest market concentration), one of the two merging firms had less than a 10% market share. There was more than one other firm as big or bigger than the acquired firm and/or there were a number of other significant competitors in the surrounding area. In these market areas, the acquiring party is required to modify its contracts with customers to make them less restrictive, which will have the effect of lowering entry barriers and making it easier for competing firms to expand if attempts to increase prices occur.

In the Albany market, after the merger, Allied will be only the second largest firm. There is a third firm about the same size as Republic along with a number of small competitors. Disposal is primarily municipally owned. In the Clarksville market, the post-acquisition levels of concentration are lower than in the other markets above, and in addition to the presence of a large competitor, there are three additional competitors about the same size as the acquired firm. As with Albany, disposal is primarily municipally owned. In the Burlington/Camden market the post-acquisition change in concentration is lower than in the other markets described above and the acquired firm has a low (approximately a 6%) market share. In the Monmouth area, the post-acquisition market concentration is lower than the other markets and there are at least two firms with market shares bigger than the acquired firm.

B. Disposal of Municipal Solid Waste in Anderson, Indiana, and New York City Areas

The divestiture provisions of the proposed Final Judgment will fully eliminate the anticompetitive effects of the acquisition in disposal services in the Anderson, Indiana and New York city, New York (defined as the Borough of Brooklyn in the Complaint) areas. The proposed Final Judgment requires divestiture of all the disposal assets

being acquired to a new independent and economically viable competitor in each of those markets. The relief sought will maintain the pre-acquisition structure of each market with no increase in concentration and thereby ensure that users of disposal services in these areas will continue to receive the benefits of competition—lower prices and better services.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Allied and Republic. The United States could have continued the litigation and sought preliminary and permanent injunctions against Allied's acquisition of the Republic assets and Republic's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of assets and the contract relief described in the proposed Final Judgment will preserve competition for small container commercial waste collection services, roll-off waste collection services, and MSW disposal in the relevant markets identified by the United States.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment:

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981)); *see also Microsoft,* 56 F.3d at 1448. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that best will serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16 (f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9 reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); *see also, United States*v. *BNS, Inc.,* 858 F.2d at 463; *United States*v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716; see also *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it fall short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [3]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case,'' *Microsoft,* 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 15, 2000.

Respectfully submitted,

David R. Bickel,
DC Bar #393409.

Arthur A. Feiveson,
IL Bar #3125793.

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc. and Republic Services, Inc. by placing a copy of this Competitive Impact Statement in the U.S. mail, postage prepaid directed to each of the above-named parties at the addresses given below, this 15 day of August, 2000.

Counsel for Defendant Allied Waste Industries, Inc.

Tom D. Smith,

Jones Day Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113

Counsel for Defendant Republic Services, Inc.

Paul B. Hewitt,

Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036

David R. Bickel,

DC Bar #393409, U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20530.

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[3] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted), quoting *United States* v. *Gillette Co.,* supra, 406 F. Supp. at 716 aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Revision of a currently approved collection); Local Law Enforcement Block Grants Program Request for Drawdown.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 7, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lluana McCann, 202–305–1772, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluaate 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) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program—Request for Drawdown (RFD).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Other: None.

The Local Law Enforcement Block Grants (LLEGB) Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will request the one lump-sum draw down of their annual LLEBG grant funds by completing the no more than sixty minutes on-line process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the application is 3,500.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: September 1, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–23068 Filed 9–7–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired); Juvenile Residential Facility Census.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency procedures of 2000. The proposed information collection is published to obtain comments from the public Paperwork Reduction Act of 1995. OMB approval has been requested by September 15, and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202–616–3634, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Juvenile Residential Facility Census.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection;* The form number is CJ–15, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal public juvenile justice facilities, private juvenile facilities.

Other: None. This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the questionnaire is 7,000 annual burden hours. The survey will be conducted biennially.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW, Washington, DC.

Dated: September 1, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–23067 Filed 9–7–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 286a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determination as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be in the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rage and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume III

Mississippi
MS000035 (Sept. 8, 2000)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA000007 (Feb. 11, 2000)
PA000008 (Feb. 11, 2000)
PA000014 (Feb. 11, 2000)
PA000015 (Feb. 11, 2000)
PA000016 (Feb. 11, 2000)
PA000019 (Feb. 11, 2000)
PA000029 (Feb. 11, 2000)
PA000059 (Feb. 11, 2000)
Virginia
VA000005 (Feb. 11, 2000)
VA000011 (Feb. 11, 2000)
VA000033 (Feb. 11, 2000)
VA000034 (Feb. 11, 2000)
VA000076 (Feb. 11, 2000)

Volume III

None

Volume IV

Wisconsin
WI000002 (Feb. 11, 2000)

Volume V

Iowa
IA000003 (Feb. 11, 2000)
IA000004 (Feb. 11, 2000)
IA000005 (Feb. 11, 2000)
IA000007 (Feb. 11, 2000)
IA000008 (Feb. 11, 2000)
IA000009 (Feb. 11, 2000)
IA000010 (Feb. 11, 2000)
IA000018 (Feb. 11, 2000)
IA000040 (Feb. 11, 2000)
IA000045 (Feb. 11, 2000)
IA000047 (Feb. 11, 2000)
IA000070 (Feb. 11, 2000)
IA000071 (Feb. 11, 2000)
IA000079 (Feb. 11, 2000)
IA000080 (Feb. 11, 2000)
Kansas
KS000004 (Feb. 11, 2000)
KS000005 (Feb. 11, 2000)
KS000007 (Feb. 11, 2000)
KS000067 (Feb. 11, 2000)
New Mexico
NM000005 (Feb. 11, 2000)

Volume VI

Colorado
CO000001 (Feb. 11, 2000)
CO000002 (Feb. 11, 2000)
CO000003 (Feb. 11, 2000)
CO000004 (Feb. 11, 2000)
CO000005 (Feb. 11, 2000)
CO000006 (Feb. 11, 2000)
CO000008 (Feb. 11, 2000)
CO000009 (Feb. 11, 2000)
CO000010 (Feb. 11, 2000)
CO000011 (Feb. 11, 2000)
CO000014 (Feb. 11, 2000)
CO000016 (Feb. 11, 2000)
CO000023 (Feb. 11, 2000)
CO000025 (Feb. 11, 2000)
Wyoming
WY000004 (Feb. 11, 2000)
WY000008 (Feb. 11, 2000)
WY000023 (Feb. 11, 2000)

Volume VII

California
CA000001 (Feb. 11, 2000)
CA000002 (Feb. 11, 2000)
CA000004 (Feb. 11, 2000)
CA000009 (Feb. 11, 2000)
CA000027 (Feb. 11, 2000)
CA000028 (Feb. 11, 2000)
CA000029 (Feb. 11, 2000)
CA000030 (Feb. 11, 2000)
CA000031 (Feb. 11, 2000)
CA000032 (Feb. 11, 2000)
CA000033 (Feb. 11, 2000)
CA000034 (Feb. 11, 2000)
CA000035 (Feb. 11, 2000)
CA000036 (Feb. 11, 2000)
CA000037 (Feb. 11, 2000)
CA000038 (Feb. 11, 2000)
CA000039 (Feb. 11, 2000)
CA000040 (Feb. 11, 2000)
CA000041 (Feb. 11, 2000)
Hawaii
HI000001 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 31st day of August 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–22912 Filed 9–7–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public comment and Recommendations: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before November 7, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached on (703) 235–1470 or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709S, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at btewaster@msha.gov (Internet E-

mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 115(e) of the Federal Mine Safety and Health Act of 1977 required the Secretary of Labor to publish proposed regulations which provide that mine rescue teams be available for rescue and recovery work to each underground mine in the event of an emergency. Congress considered the ready availability of mine rescue teams in the event of an accident to be vital protection for miners.

In responding to Congressional concerns, MSHA promulgated 30 CFR 49, Mine Rescue Teams. These regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page *(http://www.msha.gov)* and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission *(http://www.msha.gov/regspwork.htm)*'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

This request for review incorporates all paperwork requirements related to mine rescue teams, arrangements for emergency medical assistance, and arrangements for transportation for injured persons.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Recordkeeping: One year.

Affected Public: Business or other for-profit institutions.

Estimated Burden Hours:

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (in hours)	Burden (in hours)
49.2	1,145	On occasion	147	1.00	146
49.3 and 4	10	On occasion	10	2.00	20
49.6	520	Bimonthly	28,080	0.31	8,580
49.7	520	Annually	3,120	2.13	6,630
49.8	260	Annually	14,456	0.60	8,723
49.9	1,145	On occasion	147	2.00	293
75.1713–1	921	On occasion	116	2.00	233
77.1702	1,601	On occasion	206	2.00	413
Totals	6,122		46,282	0.54	25,037

Estimated Burden Hour Cost: $1,040,571.

Estimated Burden Cost (capital/startup): $0.

Estimated Burden Cost (operating/maintaining): $460,080.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 1, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00–23130 Filed 9–7–00; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Reports Clearance Officer invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995. The National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed new information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 40143–40144 on June 29, 2000 and no comments were received. NSF will forward the proposed submission to OMB for clearance simultaneous with the publication of this second notice.

DATES: The Office of Management and Budget (OMB) should receive written comments on or before October 10, 2000.

ADDRESSES: 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: Office of Information and Regulatory Affairs, Attention: Desk Officer: National Science Foundation, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, (703) 292–7556, or send e-mail to splimpto@nsf.gov. You may also obtain a copy of the data collection plans and instruments from Ms. Suzanne Plimpton, NSF's Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 2230, phone (703) 292–7556. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF 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.

Type of Review: New.

Title: Generic Survey Clearance of the Science Resources Studies Survey Improvement Projects and Quick Response Studies.

Abstract: The National Science Foundation's (NSF) Division of Science Resources Studies (SRS) needs to collect timely data on constant changes in the science and technology sector and to provide the information to policy makers in Congress and throughout the Government. SRS will sponsor quick response studies and focus groups on science and technology subjects, perform cognitive testing to improve survey methodology and questionnaires, and pretest questions for future surveys.

Expected Respondents: Respondents will be from industry, academia, nonprofit organizations, members of the public, and Federal agencies. Data and information collection will be by mail, Internet, World Wide Web, telephone, visits, and/or focus groups. As the table below shows, as many as 330 institutions will be contacted. No institution will be contacted more than twice in one year. In addition, 40 members of the public may be contacted for a study of public attitudes toward science.

Information from the respondents is needed to provide policy-makers with updates of the economic, financial, employment, and education situation in the science and technology sector of industry, academia, and nonprofit organizations. The information will also help NSF improve its current data collection instruments and processes.

To minimize burden on small entities and to make sure that a high proportion of the science and technology universe is captured, most respondent selection will be designed with probability proportional to size. It is possible that during the 3 years of the survey clearance, NSF will study an issue that focuses on small entities, such as start-up high-technology companies. In this case, every effort will be made to use technology to limit the burden on respondents from small entities.

Information being collected is not considered to be sensitive. The contact letter and/or survey instrument will clearly indicate participation is voluntary and confidential.

Expected Burden:

1. Surveys of institutions	Number of institutions	Hours
Cognitive testing—Survey of Scientific & Engineering Research Facilities	50	100
Cognitive testing—Survey of R&D Funding & Performance by Nonprofit Organizations	30	60
Additional studies not specified	250	6,000
Total Institutions	330	6,160

2. Survey of persons	Number of members of the public (respondents)	Hours
Cognitive testing—Survey of Public Attitudes Toward and Understanding of Science & Technology	40	80
Grand Total Institutions and Members of the Public	370	6,240

Frequency: Respondents in the 3 identified studies will be contacted once per year. To meet the needs of policy-makers some respondents in the quick response studies may be contacted twice in one year.

Affected Public: Industry, academia, nonprofit organizations, members of the public, and Federal agencies.

Dated: September 5, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 00–23135 Filed 9–7–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities''.

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

5. Who will be required or asked to report: Licensees and applicants for nuclear power plants and non-power reactors (research and test facilities).

6. An estimate of the number of responses: 7,907.

7. The estimated number of annual respondents: 175.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 4.7M (approximately 2.3M reporting hours and 2.4M recordkeeping hours); an average of 26.5K per respondent.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 50 of the NRC's regulations, ''Domestic Licensing of Production and Utilization Facilities,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may make determinations necessary to promote the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 10, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date: Amy Farrell, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 31st day of August 2000.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–23143 Filed 9–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc.; Facility Operating License No. DPR–26, Receipt of Additional Information Relating to Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that additional information has been submitted in support of a Petition dated March 14, 2000, filed by Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists, the Nuclear Information & Resource Service, the PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project (petitioners). The petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Indian Point Nuclear Generating Unit No. 2 (IP2), owned and operated by Consolidated Edison Company of New York, Inc. (the licensee). The petitioners requested that the NRC issue an order to the licensee preventing the restart of IP2, or that the license for IP2 be modified to limit it to zero power, until (1) all four steam generators are replaced, (2) the steam generator tube integrity concerns identified in Dr. Joram Hopenfeld's differing professional opinion (DPO) and in Generic Safety Issue 163 are resolved, and (3) potassium iodide tablets are distributed to residents and businesses within the 10-mile emergency planning zone (EPZ) or stockpiled in the vicinity of IP2. The original Petition was published in the **Federal Register** on April 11, 2000 (65 FR 19398). Previously, supplemental information consisting of a letter from Mr. Lochbaum dated April 14, 2000, a letter from Mr. Riccio dated April 12, 2000, and information provided at a public meeting on April 7, 2000, was acknowledged by letter dated June 26, 2000, and published in the **Federal Register** on July 14, 2000 (65 FR 43789). Subsequent to these supplemental letters, additional information and requests were received by letters dated June 12, June 29, and July 13, 2000.

As stated in the original and second **Federal Register** notices, the requests that the NRC prevent the licensee from restarting IP2 until all four steam generators are replaced and until potassium iodide tablets are distributed to people and businesses within the 10-mile EPZ or are stockpiled in the vicinity of IP2 are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. On the basis of information provided in the June 29 supplement, the NRC staff determined that the request that IP2 not be permitted to restart until after a full-participation emergency preparedness exercise has been successfully completed meets the criteria for review under 10 CFR 2.206. As provided by Section 2.206, action will be taken on this request within a reasonable time.

In their June 12 supplement, the petitioners requested that IP2 not be allowed to restart until concerns identified in an internal Federal Emergency Management Agency (FEMA) memorandum dated May 12, 2000, are addressed. Specifically, the petitioners requested that NRC and FEMA re-evaluate the adequacy of the IP2 emergency planning drills and that a new, more realistic exercise be conducted. However, in a letter to the NRC dated June 20, 2000, FEMA clarified the positions stated in the internal FEMA memorandum, and confirmed that FEMA continues to find that there is reasonable assurance of the adequacy of offsite emergency preparedness at IP2. In addition, the NRC staff determined that the issues raised in this supplement had already been the subject of NRC staff review at IP2 and that the information provided in the supplement was not sufficient to warrant further inquiry.

In the July 13 supplement, the petitioners requested the reinstatement of their request that Dr. Hopenfeld's DPO be resolved before allowing IP2 to restart, asserting that the resignation of a DPO panel member raised doubts about the efficacy of the DPO process, and that, therefore, the Petition Review Board should reconsider its rejection of Dr. Hopenfeld's DPO for review under the 10 CFR 2.206 process. However, the NRC staff rejected this request because it did not meet the the 10 CFR 2.206 criteria. Dr. Hopenfeld's concerns were generic in nature and the information the petitioners had provided was not uniquely applicable to IP2 to support the assertions raised in their 10 CFR 2.206 Petition. The information in the July 13 supplement did not provide any information to alter that determination, and, therefore, this request will not be treated pursuant to 10 CFR 2.206 of the Commission's regulations.

Copies of the Petition and additional information are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www/nrc.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of August 2000.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–23144 Filed 9–7–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Review Commission

Sunshine Act Meeting

TIME AND DATE: 10 a.m. on September 15, 2000.

PLACE: The Commission's National Office at One Lafayette Centre, 1120 20th St., NW., 9th Floor, Washington, DC 20036–3419.

STATUS: Pursuant to 29 CFR § 2203.3(a) the first part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED: This meeting will be opened to allow the Commission to evaluate the Commission's pilot program for the Settlement Part (29 CFR § 2200.120) and to decide whether to make it permanent. After that matter is disposed of the meeting will be closed for the Commission to consider cases pending for adjudication.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., General Counsel, (202) 606–5410.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 00–23192 Filed 9–5–00; 5:11 pm]

BILLING CODE 7600–01–M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of OMB Circular A–76 Transmittal Memorandum No. 22

AGENCY: Office of Management and Budget, Executive Office of the President.

SUMMARY: The Office of Management and Budget (OMB) publishes technical changes to the OMB Circular A–76 Revised Supplemental Handbook.

DATES: The OMB Circular A–76 Transmittal Memorandum No. 22 is effective with publication in the **Federal Register** and shall apply to all cost comparisons where the in-house offer remains sealed as of the date of this publication. Inventories produced in accordance with the Federal Activities Inventory Reform Act shall also comply with these changes.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Childs, Office of Federal Procurement Policy, NEOB Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–6104.

Availability: Copies of the OMB Circular A–76, its Revised Supplemental Handbook and currently applicable Transmittal Memoranda may be obtained at the OMB home page. The online address (URL) is http://www.whitehouse.gov/OMB/circulars/index.html#numerical. Paper copies of the Circular and Supplemental Handbook can be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Telephone No. (202) 395–7579.

Interested parties are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through 14 have been canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook dated March 27, 1996 (**Federal Register**, April 1, 1996, pages 14338–14346). Transmittal Memoranda 16, 17, and 18, which provided A–76 related Federal pay raise and material escalation cost factors are canceled. Transmittal Memorandum No. 19, to the extent that it provided A–76 related Federal pay raise and material escalation cost factors, has been canceled. The standard retirement cost factors for the weighted average CSRS/FERS pension and Federal retiree health cost estimates and the post-retirement health costs also provided by Transmittal Memorandum No. 19, remain in effect. Transmittal Memorandum No. 20, which implemented the Federal Activities Inventory Reform (FAIR) Act, remains in effect. Transmittal Memorandum No. 21, which provides the current A–76 related Federal pay raise and material escalation cost factors also remains in effect.

SUPPLEMENTARY INFORMATION:

On May 4, 2000 (65 FR 25966), the Office of Management and Budget (OMB) requested agency and public comments on proposed changes to the OMB Circular A–76 Revised Supplemental Handbook. The proposed changes would:

(1) Amend the Federal Activities Inventory Reform Act (FAIR) implementation guidance provided by OMB Circular A–76 Transmittal Memorandum No. 20, by changing the A–76 Revised Supplemental Handbook at Appendix 2, paragraph g.3., to provide for 30 working days rather than 30-calendar days as the period during which an interested party may submit its initial challenge to an agency's FAIR Act inventory . It was also proposed that Appendix 2, paragraph g.4., be changed to provide for 28 working days rather than 28 calendar days as the period during which the agency should issue its decision on the initial challenge;

(2) Delete Part 1, Chapter 3, paragraph K.1.e., of the Revised Supplemental Handbook, which requires A–76 cost comparison appellants to ''demonstrate that the items appealed (in an A–76 cost comparison) individually or in aggregate, would reverse the tentative decision.'' The proposed change was intended to avoid any conflict in requiring a single A-76 cost comparison administrative appeal period, as provided at Part 1, Chapter 3, paragraph K.7.

(3) Strengthen OMB's longstanding policy of limiting the participation of directly affected employees on an A–76 cost comparison Source Selection Board or its evaluation teams by revising Part 1, Chapter 3, paragraph H. 3.b. of the Revised Supplemental Handbook.

OMB received 13 responses to its request for comments (65 FR 25966); 6 Federal agencies, 5 industry or trade groups, 1 employee organization and one individual. A discussion of the

significant comments, and OMB's responses to those comments follows. After considering all comments received on the proposed changes to the Revised Supplemental Handbook, OMB is issuing final guidance to the agencies.

Summary of Comments Received

1. The proposed revision to expand the FAIR Act's inventory challenge and agency response periods from calendar days to working days.

Four commentors supported the proposed change. All other commentors were silent on this issue, except one who asked that the FAIR Act administrative appeal period be extended ''from 30 to 180 days.'' The change from 30 days to 180 days would require a change in the statutory language of the FAIR Act itself, which provides for a 30-day administrative appeal period and a 28-day period for the agency to issue its decision on the initial challenge. The proposed revision from calendar days to working days is adopted as a final revision to the Supplemental Handbook.

2. The proposal to delete Part 1, Chapter 3, paragraph K.1.e., of the Revised Supplemental Handbook to avoid any conflict with the provision at Part 1, Chapter 3, paragraph K.7 that there is a single cost comparison appeal period.

a. *Comment:* One commentor asked for changes that would revise the language to clarify that an appeal must continue to demonstrate that the items appealed individually or in aggregate, would reverse the tentative decision. There was concern that unless this requirement was firmly re-established the Administrative Appeal Authority could be burdened by appeals that would not affect the outcome of the tentative decision. Similarly, one commentor objected to the deletion of Part 1, Chapter 3, paragraph K.1.e., based on the perception that its deletion—alone—eliminated any threshold for reversing a decision.

Response: OMB agrees with the commentors' concerns. The Supplemental Handbook has for years provided that an administrative appeal needs to raise outcome-determinative issues. *See* 1983 Supplemental Handbook, Part I, Chapter 2, Paragraph I.6.c (an appeal must ''Demonstrate that the result of the appeal may change the cost comparison decision''); 1996 Supplemental Handbook, Part I, Chapter 3, Paragraph K.1.e (an appeal must ''Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative decision'').

The requirement that an administrative appeal raise only outcome-determinative issues had been intended to streamline the appeal process. However, in recent years, this requirement has had the unintended opposite effect in a number of cases. While the process permitted appeals of individual items or items that would in aggregate reverse a tentative cost comparison decision, neither the 1983 Supplement or the 1996 Revision anticipated sequential appeals or even the appeal—by the party that had originally prevailed in the tentative decision—of an Administrative Appeal Board's initial decision to reverse the tentative decision. In the latter situation, the party that originally prevailed could not ask the Administrative Appeal Board at the start of the appeals process to review and correct alleged errors in the cost comparison, because the correction of such errors would not be outcome-determinative. However, in those cases where the Administrative Appeal Board issues an initial decision that would *reverse* the cost comparison, the originally-prevailing parties have responded by filing a sequential appeal that raises the errors in the original cost comparison. As a result, contrary to its intent, the requirement to raise only outcome-determinative issues in the initial appeal has resulted in a longer and more burdensome appeal process.

To eliminate these concerns, to reduce the administrative burden of potential sequential appeals, to ensure equal access by all parties to the administrative appeal process and, to emphasize that the Government seeks the best overall decision, OMB is implementing the proposed change published in the **Federal Register** (65 FR 25966).

By deleting Part I, Chapter 3, paragraph K.1.e., of the Supplemental Handbook, OMB eliminates sequential appeals and their related delays. All interested parties need to review the tentative A–76 cost comparison decision and all supporting documentation and immediately identify and bring to the attention of the Administrative Appeals Board any potential errors that, if corrected, would provide for a more accurate determination. Additional language has been added at Part I, Chapter 3, Paragraph K.1.a., to emphasize that all appeals must be filed within the initial A–76 administrative appeal period, including any concerns identified by the apparent winner of the tentative decision.

We expect that the revision will streamline the administrative appeal process. The vast majority of cost comparisons are appealed already, and we do not anticipate that the revision will result in many new issues being raised to the Administrative Appeals Board. Instead, our expectation is that, by having the parties immediately bring before the Administrative Appeals Board all the issues that they have with the tentative decision, the revision will ultimately result in a shorter appeals process. If this expectation is not borne out by future experience, then OMB can revisit the matter.

b. *Comment:* One commentor, while concurring with the deletion of Part 1, Chapter 3, paragraph K.1.e. suggested that the Appeal Authority be required to make its proposed finding available for public and agency comment prior to issuing a final decision.

Response: The suggestion that the Appeal Authority be required to submit its proposed findings to agency or public comment prior to issuance of the final A–76 cost comparison decision constitutes a substantial change to the current process and such a requirement could potentially result in significant additional delays to the appeals process. Such a change is, therefore, beyond the scope of this current revision process. We have accordingly not made the proposed change.

c. *Comment:* One commentor suggested that OMB take this opportunity to establish that the 20–30 day A–76 cost comparison administrative appeal period be converted to working days from calendar days at Part 1, Chapter 3, paragraph K.1.b., consistent with the changes made above at Appendix 2, paragraph g.3., and paragraph g.4., regarding the FAIR Act inventory appeal process.

Response: The March 1996 A–76 Revision increased the period for which an interested party could file an administrative appeal from 15 days to 20 days with the possibility of extending it to 30 days, at the agency's discretion. The submission of an A–76 cost comparison administrative appeal is a very focused submission, directed at the costs entered on the cost comparison form and compliance with the Circular and its Supplemental Handbook. The challenge and appeal of agency FAIR Act inventories is significantly different in scope. The Government's experience since the 1996 revision has been that the 20–30 day A–76 appeal period appears to be sufficient for challengers to file their appeals, furthers the public interest in reaching an expeditious resolution and avoids placing employees or contractors in a position of uncertainty for any longer than necessary. We have accordingly not made the proposed change.

3. Strengthen OMB's longstanding policy of limiting the participation of

directly affected individuals on an A–76 cost comparison Source Selection Team.

a. *Comment:* All commentors agreed that additional guidance is needed. Where they differed was in the use of the term ''individual'' as proposed by OMB, and the application of the term to military service members whose work is included in the competition. In the view of several commentors, directly affected military service personnel should continue to be eligible to serve on the Source Selection Board (SSB) and its evaluation teams, because the military member's job will continue—either at another location or another function at the same location, even if the ultimate decision was that the work would be contracted-out. In accordance with this view, military members could continue to be eligible to serve on the SSB and evaluation teams unless they have a financial interest in one of the competing offerors to the solicitation.

Response: OMB believes that it is good business practice to exclude individuals who are directly affected by an A–76 cost comparison from participating in a Source Selection Board (SSB) for the resulting contract. The source selection process is most effective when decision-makers are chosen independent of the function under review. OMB readily acknowledges that the employment of military service personnel will not be adversely affected by the decision to retain or convert work to or from in-house, contract or Inter-Service Support Agreement performance. However, we do not believe that including military personnel, whose current jobs, local responsibilities, assignments and even supervisory relationships could be affected, is a good business practice in the context of an A–76 cost comparison. Indeed, in many cases, these are the management and other support personnel who have likely had input to the local scope and performance criteria of the PWS and the in-house MEO. The special skills that are afforded by local military personnel and the workforce investments that have been made in these kinds of support staff can be acquired from other sites, installations and made readily available through modern technology or contract support. The proposal would permit the inclusion of individuals whose work is included in the scope of the competition in only compelling circumstances and with a full understanding of these business practices.

Jacob J. Lew,

Director.

Circular No. A–76 (Revised); Transmittal Memorandum No. 22

August 31, 2000.

To the Heads of Executive Departments and Agencies

From: Jacob J. Lew, Director.
Subject: Performance of Commercial Activities.

This Transmittal Memorandum implements changes to the OMB Circular A–76 Revised Supplemental Handbook, in furtherance of the requirements of the Federal Activities Inventory Reform Act (''The FAIR Act''), Public Law 105–270 and to clarify other issues of concern. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum 15, published in the April 1, 1996, **Federal Register** at pages 14338–14346. The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the FAIR Act on June 14, 1999, **Federal Register** at pages 33927–33935.

After having requested and considered agency and public comments, OMB is making three changes to the OMB Circular A–76 and its Revised Supplemental Handbook. The Federal Activities Inventory Reform Act (FAIR) provides that there shall be a 30-day administrative challenge period available to interested parties who might wish to challenge an agency's decision to include or omit an activity from the list of commercial activities. As a part of OMB Circular A–76 Transmittal Memorandum No. 20, dated June 14, 1999, OMB stated that the statutory 30-day and 28-day challenge and challenge response periods would be calendar days, while the 10-day appeal period would be working days. OMB is aware that the 30-calendar day deadline for filing challenges posed certain difficulties in 1999. Appendix 2, paragraph g.3., of the Revised Supplemental Handbook is, therefore, revised to provide for 30-working days for the filing of challenges. Appendix 2, paragraph g.4., is also changed to provide 28-working days for the agency's issuance of its decision on the initial challenge.

Concern has been expressed that Part 1, Chapter 3, paragraph K.1.e., of the OMB Circular A–76 Revised Supplemental Handbook may be in conflict with the statement at Part 1, Chapter 3, paragraph K.7., that provides that sequential administrative cost comparison appeals are not authorized. It is OMB's view that all concerns regarding the conduct of a cost comparison should be brought forward to the designated administrative appeal authority within the single appeal period. Therefore, to ensure that all relevant concerns with the conduct of a cost comparison are brought forward, and to eliminate sequential appeals and their related delays, OMB is rescinding Part 1, Chapter 3, paragraph K.1.e. of the Supplement. In order to emphasize that all interested parties need to review the tentative A–76 cost comparison decision and all supporting documentation and immediately identify and to bring to the attention of the Administrative Appeals Board any potential errors that, if corrected, would provide for a more accurate determination, OMB is revising Part I, Chapter 3, Paragraph K.1.a., to read as follows:

''a. Be submitted by all interested parties, including the tentative winner of a cost comparison decision, within the initial administrative appeal period.''

And finally, OMB has been concerned that the use of Federal employees on Source Selection Teams, when those employees are subject to losing their jobs or otherwise being adversely affected by the award of the contract being reviewed by that Source Selection Team, is a poor business practice. OMB is also concerned that such a practice puts certain important skills that are developed by participating on a Source Selection Team at risk. Therefore, OMB revises Part 1, Chapter 3 paragraph H. 3.b. of the Revised Supplemental Handbook as follows:

b. ''The Government should establish a source selection evaluation or advisory team. Individuals who hold positions in the function under study should not be members of the team, unless an exception is authorized by the head of the contracting activity. Exceptions will be authorized only in compelling circumstances and, in such cases, the head of the contracting activity shall provide a written statement of the reasons for the action. As a result, OMB has decided to strengthen its longstanding policy limiting such participation, as a better business practice. Individuals who hold positions in an A–76 study should not be members of the Source Selection Team, unless an exception is authorized by the head of the contracting activity. Exceptions may be authorized only in compelling circumstances and, in such cases, the head of the contracting activity will provide a written statement of the reasons for the action.''

All changes in this Transmittal Memorandum are effective with publication in the **Federal Register** and shall apply to all cost comparisons where the in-house offer remains sealed as of the date of this publication. Copies of the OMB Circular A–76, its Revised Supplemental Handbook and currently applicable Transmittal Memoranda may be obtained at the OMB home page. The online address (URL) is *http://www.whitehouse.gov/OMB/circulars/index.html#numerical.* Paper copies of the Circular and Supplemental Handbook can be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–7579.

[FR Doc. 00–23018 Filed 9–7–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43240; File No. 4–208]

Intermarket Trading System; Notice of Filing of Fifteenth Amendment to the ITS Plan Relating to Remote Specialists, the National Market System Test System, Trade Adjustment Procedures, and Technical Revisions

September 1, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 6, 2000, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Fifteenth Amendment'') to the restated ITS Plan.[2] The ITS participants filed the amendment to: (1) Recognize the BSE's and PCX's implementation of Remote Specialists; (2) recognize the implementation of the National Market Test System; (3) codify procedures for trade adjustment; and, (4) make technical revisions. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description of the Amendment

The purpose of the proposed amendment is to: (1) Recognize the BSE's and PCX's implementation of Remote Specialists; (2) recognize the implementation of the National Market Test System; (3) codify procedures for trade adjustment; and (4) make technical revisions.

The BSE and PCX have filed rule proposals with the Commission to permit specialists to carry out their specialist operations off the floors of the BSE and PCX.[3] Text in sections 6(a)(ii) (B) and (E), 7(c) and 8(a) of the ITS Plan is revised to reflect the changed manner in which BSE and PCX will interact with ITS.

The National Market Test System (''NMTS'') is a stand-alone system that supports testing of the Consolidated Tape System, Consolidated Quotation System, ITS, and Participant interfaces with these systems. The NMTS can be used during normal business hours and ITS will be responsible for one-third of the costs of the NMTS. The ITS Plan provisions for the NMTS equally divide the ITS costs among all ITS Participants.

New Section 6(b)(iv) codifies the trade adjustment process whereby, and circumstances under which, supervisors monitoring Participant's Markets may request the ITS Control Center to enter agreed-upon adjustments to System trades (price, size, buy or sell side, cancel or insert trade ''as of'' a prior day).

Under the technical revisions, provisions dealing with the ITS/CAES Linkage as adopted by the Commission are revised to eliminate the definition of the term ''ITS/CAES security (stock)'' and to make other conforming changes.[4] The revision also reinserts text inadvertently omitted by the Commission. According to the Participants, the revisions are otherwise neutral as to their effect on the Commission's adopted amendment. The revisions also redesignate current sections 12, 13, and 14 as sections 13, 14 and 15, and current section 15 as section 12 (with other conforming changes), and reflect the change in the Amex's corporate name.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment, including whether the proposed Plan amendment 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, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan amendment change that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 Plan amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23074 Filed 9–7–00; 8:45 am]

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[1] 17 CFR 240.11Aa3–2.

[2] The ITS is a National Market System (''NMS'') plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938. The ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter (''OTC'') market operated by the National Association of Securities Dealers, Inc. (''NASD''). The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants to the ITS Plan include the American Stock Exchange, Inc. (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc., (collectively, ''Participants'').

[3] The Commission approved the BSE's proposal on August 8, 2000. *See* Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000). The PCX's proposal was published in the **Federal Register** in 1999, but has not been approved by the Commission. *See* Exchange Act Release No. 40051 (February 12, 1999), 64 FR 8426 (February 19, 1999).

[4] *See* Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43236; File No. 4–208]

Intermarket Trading System; Notice of Filing and Temporary Summary Effectiveness of the Sixteenth Amendment to the ITS Plan Relating to Decimal Pricing in Listed Securities

August 31, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 24, 2000, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Sixteenth Amendment'') to the restated ITS Plan.[2] The ITS Participants filed the amendment to: (1) Recognize the transition to decimal pricing; (2) reduce the Pre-Opening price change parameter for certain securities; and (3) expand the Pre-Opening price change parameters for certain stocks. The Commission is publishing this notice to solicit comments on the amendment

[1] 17 CFR 240.11Aa3–2.

[2] The ITS is a National Market System (''NMS'') plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–1. *See* Securities Exchange act Release No. 19456 (January 27, 1983), 48 FR 4938. The ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter (''OTC'') market operated by the National Association of Securities Dealers, Inc. (''NASD)''. The ITS was designed to facilities intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants to the ITS Plan include the American Stock Exchange, Inc. (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (collectively, ''Participants'')

from interested persons. While comment is being solicited on the proposed amendment, the Commission has determined to make the proposed amendment summarily effective upon publication of notice on a temporary basis.[3]

I. Description of the Amendment

The purpose of the proposed amendment is to: (1) Recognize the transition to decimal pricing, which began on August 28, 2000; (2) reduce the Pre-Opening price change parameter for certain Securities from 1/8 point $(0.125) to $.10; and (3) expand the Pre-Opening price change parameters for certain stocks, which are reported on Network B of the Consolidated Tape Association, similar to those stocks reported on network A.[4]

II. Discussion

The Commission has made a preliminary determination that the proposed amendment is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system. While comment is being solicited on the proposed amendment, the Commission therefore will make the amendment summarily effective on a temporary basis upon publication of notice of the amendment.[5]

The Commission believes that temporary effectiveness of the amendment is consistent with the public interest, the protection of investors, and the maintenance of fair orderly markets because the amendment is necessary to accommodate decimal pricing, the new method of pricing for equity securities and options. The changes to the ITS Plan are necessary to accommodate this transition to decimals by providing for intermarket trading in decimals. On June 8, 2000, the Commission ordered the self-regulatory organizations (''SROs'') to submit a plan that will begin phasing in decimal pricing in equity securities and options on or before September 5, 2000, and complete this phase in no later than April 9, 2001.[6] Since this order, the SROs have submitted a phase-in plan and rule filings necessary to implement decimal pricing. The Sixteenth Amendment to the ITS Plan is another step in the process of the market-wide conversion to decimal pricing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment, including whether the proposed Plan amendment 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 Plan amendment change that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 Plan amendment will also be available for inspection and copying at the principal office of the ITS. All submissions should refer to File No. 4–208 and should be submitted by September 29, 2000.

IV. Conclusion

The Plan amendment is hereby made summarily effective on a temporary basis not to exceed January 8, 2001, pursuant to Exchange Act Rule 11Aa3–2(c)(4).[7]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23076 Filed 9–7–00; 8:45 am]

BILLING CODE 8010–01–M

[3] Exchange Act Rule 11Aa3–2(c)(4) allows the Commission to summarily put into effect on a temporarily basis a Plan amendment ''if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.''

[4] The Commission notes that the Fifteenth Amendment to the restated ITS Plan will be published for comment on September 1, 2000. The Sixteenth Amendment contains text that is proposed to be added to the ITS Plan through the Fifteenth Amendment. Among other things, this text recognizes the operation of Remote Specialists on the BSE and PCX. *See* Securities Exchange Act Release No. 43240 (September 1, 2000).

[5] See Exchange Act Rules 11Aa3–2(c)(4).

[6] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] 17 CFR 240.11Aa3–2(c)(4).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release no. 34–43229; File No. SR–Amex–00–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

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 August 29, 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 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Part II.A. below.

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 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 Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission on June 2, 2000.[3] Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entities a floor broker to, under certain conditions, cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts of more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade take place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the almost three months since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

Because the pilot program is due to expire on August 31, 2000, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to Section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–00–51 and should be submitted by September 29, 2000.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register.** The proposal will allow the pilot program, otherwise due to expire on August 31, 2000, to remain effective and in place uninterrupted while revisions are being

[3] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206.

considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through November 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23028 Filed 9–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43233; File No. SR–Amex–00–03]

Self-Regulatory Organizations; American Stock Exchange LLC.; Order Approving Proposed Rule Change Relating to the Reporting of Options Transactions

August 30, 2000.

I. Introduction

On February 22, 2000, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the reporting of options transactions. The Amex filed Amendment No. 1 to this proposal on June 12, 2000.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 27, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Amex proposes to adopt a new rule, Amex Rule 992, to require the reporting of options transactions within 90 seconds of the execution. In Amendment No. 1, the Exchange confirmed that any transaction not reported within 90 seconds after execution would be designated as ''late'' and would be a violation of proposed Amex Rule 992. In addition, pursuant to the proposed rule, a pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

Currently, the Amex Options Display Book (''AODB'') handles the reporting of options transactions.[5] The AODB processes orders routed to it both electronically and manually. Orders routed electronically are either executed automatically by the Exchange's Auto-Ex system or executed by the specialist through the AODB.[6] These options transactions are immediately reported to the Amex Option Market Data System, which processes all Amex trades, and the Options Price Reporting Authority, which disseminates trade information to the Amex's members and the investing public through vendors. Orders manually routed to the Exchange through a floor broker and executed in the trading crowd are reported to the specialist or his clerk for entry into the AODB and processed in the same manner as electronically routed and executed trades.[7]

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act.[8] In particular, the Commission finds that the proposed rule change furthers the objectives of section 6(b)(5),[9] in that it is designed to prevent fraudulent manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposal, which requires the reporting of all options transactions within 90 seconds of execution, should help to prevent fraudulent and manipulative acts and practices, as well as to promote just and equitable principles of trade. The Commission believes that the proposed rule change, as amended, should enable the Exchange to provide accurate trade information to investors more efficiently. The enhanced transparency associated with timely trade reporting should facilitate price discovery for investors and assist the Amex's surveillance of its members' trading in listed options.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex-00-03) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23031 Filed 9–07–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43231; File No. SR–Amex–00–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Rules Regarding Decimal Pricing

August 30, 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 August 7, 2000, the American Stock Exchange LLC ''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 9, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the proposed rule text and confirmed that a member's failure to report an options transaction within 90 seconds would be considered a violation of proposed Amex Rule 992.

[4] Securities Exchange Act Release No. 42966 (June 20, 2000), 65 FR 39638 (June 27, 2000).

[5] According to the Exchange, the AODB is an electronic order book and execution-processing system that was adopted to replace and improve upon what was once a paper-based specialist's book.

[6] The Exchange estimates that 60–70% of options transactions are electronically routed and executed orders that are immediately reported and printed on the tape.

[7] An example of such a trade is one that does not include either the specialist or a customer limit order as a party to the trade.

[8] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission agreed to waive the 5-day pre-filing notice requirement because the proposal implements decimal pricing pursuant to the ''Decimal Implementation Plan for the Equities and Options Markets'' (''Plan'') submitted to the Commission on July 24, 2000.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise various Exchange equities and options rules to provide for decimal pricing pursuant to the Plan. The Exchange also proposes to amend Amex Rule 232 to conform it to a proposed amendment to the Intermarket Trading System (''ITS'') Plan. The Amex has designated this proposal as non-controversial, and requests that the Commission waive the 30-day operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[6] The text of the proposal is available at 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 8, 2000, the Commission ordered the exchanges and the NASD (''Participants'') to submit a phase-in plan to the Commission by July 24, 2000 providing for decimal pricing in exchange-listed securities and options by September 5, 2000, and for phasing in of decimal pricing for at least some Nasdaq securities by March 12, 2001, with decimalization extended to all exchange-listed securities, options and Nasdaq securities by April 9, 2001.[7] The June 8th Order also requires the Participants to file by August 7, 2000 any rule changes necessary to implement the Plan.

The Participants have developed recommendations for a Phase-In Period for conversion to decimal pricing. These recommendations are contained in the Plan, which was presented to the Commission on July 24, 2000. This Phase-In Period, which consists of four phases, will begin on August 28, 2000, and end with full implementation of decimal pricing for all equities and options on or before April 9, 2001.

The Participants have recommended that a specified Minimum Price Variation (''MPV'') schedule be implemented during phase-in by all markets. The recommended MPVs are as follows: for equity issues, $.01 MPV; for options issues quoted under $3 a contract, $.05 MPV; for options issues quoted at $3 a contract and greater, $.10 MPV. These MPVs will apply through the last day the Plan is in effect or until any other date identified by the Commission.

Phase I will begin on August 28, 2000 with quotations in decimals in seven New York Stock Exchange (''NYSE'') listed stocks and six Amex listed stocks. Three of the NYSE listed stocks also have options. These options have also been priced in decimals. Amex has announced that it will begin decimal pricing in the following six stocks on August 28th: Regal Beloit Corp.; Media General Inc.; ON2.com Inc.; eMagin Corp.; Psychemedics Corp.; and Global Light Telecommunications Inc. In addition, Amex will also begin decimal pricing of options on FedEx Corporation and Gateway Inc. on August 28, 2000.

In Phase IIA, beginning on September 25, 2000, an additional 50–100 equities will be added industry wide, together with associated options. The Participants will continue to evaluate the transition to decimal pricing, especially as relating to capacity, liquidity and trading patterns. Under Phase IIB, the Participants along with other interested parties (*i.e.* National Securities Clearing Corporation, Depository Trust Company, Options Clearing Corporation, Options Price Reporting Authority, Securities Industry Automation Corporation, Consolidated Tape Association, and ITS Operating Committee), will evaluate Phases I and IIA and, if the Participants believe they are technically prepared for full implementation and there would be no adverse impact on the investing public, may choose to convert all equities and/or all options issues (both exchange-listed and Nasdaq-listed options) to decimal quoting. The Participants could also elect to implement a penny pilot in selected option issues pursuant to the Plan. Any decisions under Phase IIB will be made during the period between November, 2000 and April, 2001.

In Phase III a limited number of Nasdaq issues (approximately 10 to 15) will begin decimal pricing on or before March 12, 2001, under the recommended MPV schedule. In Phase IV, Participants will evaluate results of previous phases, and after consultation with the SEC and other industry participants, could recommend full implementation of decimal quoting for all equities and options under the recommended MPV schedule on or before April 9, 2001 through the last day the Plan is in effect.

The Amex also proposes to amend Exchange Rule 232 to conform it to a proposed amendment to the ITS Plan.

A. Amendments to Amex Equity Rules

The Exchange proposes to amend its rules relating to equities trading to accommodate implementation of decimal pricing in accordance with the Plan. Equities rules that currently reference quoting in fractions are amended to reflect the transition to decimals. References to fractions have been converted to two decimal places. When this is not possible (*e.g.*, ⅛), the fraction generally has been rounded down to the nearest five cent increment (*e.g.*, $.10 for ⅛). Conforming changes have been made to Exchange Rules 103, 111, 127, 132, 134, 154, 175 (Guidelines) and 205.

Rule 103 (General Floor Prohibitions). The Exchange proposes to amend Commentary .03 to provide examples stated in decimals for equities subject to decimal pricing, in addition to current fractional references for equities quoting in fractions.

Rule 109 (''Stopping'' Stock). The Exchange proposes to amend Amex Rule 109 such that references to ''minimum fractional change'' are charged to ''minimum price variation.'' In addition, reference is made to Amex Rule 127 for different MPVs applicable to equities quoting in fractions and those subject to decimal pricing.

Rule 111 (Restrictions on Registered Traders). The reference to ''one-eighth of a point'' in paragraph (e)(2) of Amex Rule 111 is pr0posed to be changed to the ''minimum price variation.''

Rule 127 (Minimum Price Variations). Amex Rule 127 would be amended to subject current minimum fractional change parameters to Commentary .01 of the same rule relating to decimal pricing. Commentary .01 states that, notwithstanding the provisions of Amex Rule 127 for equity securities that are priced in decimals pursuant to the Plan, the MPV shall be one cent ($.01). In addition, Commentary .01 makes clear that equities not subject to decimal pricing pursuant to the Plan will continue to be subject to the minimum fractional change set forth in the Rule. Existing Commentaries .01, .02 and .03

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) (''June 8th Order'').

are re-numbered to .02, .03 and .04, respectively, and provide that the minimum fractional changes provided there (*e.g.* 1/64 for SPDRs), are subject to Commentary .01, thus providing for prospective decimal pricing under the Plan.

Rule 132 (Price Adjustment of Open Orders on ''Ex-Date''). The examples in Commentaries .01 and .03 of Amex Rule 132, which refer to rounding to a higher 1/8 point variation, are proposed to be eliminated. Commentary .01 of Amex Rule 132 proposes to state that orders would be reduced by the next higher ''minimum price variation'' (instead of ''variation''), with reference to Amex Rule 127. The Exchange also proposes in Commentary .03 of Amex Rule 132 that orders be rounded to the next lower ''minimum price variation'' instead of ''variation,'' and also reference to Amex Rule 127.

Rule 134 (Cash, Next Day and Seller's Option Transactions). Amex Rule 134(b) would provide that publication of a cash or next day transaction will not be expected if the transaction can be effected at a price not greater than 1/8 point away from the regular way market. The rule clarifies that reference to 1/8 point in paragraph (b) applies to equities quoting in fractions. For equities subject to decimal pricing, the applicable increment would be $.10.

Rule 154 (Orders Left with Specialist). References to ''point'' or ''points'' are proposed to be changed to ''cents,'' ''dollar'' or ''dollars'' as the context requires. Except for the reference to ''1/8 of a point'' in Commentary .15 of Amex Rule 154, which is proposed to be changed to ''ten cents,'' all fractional references are proposed to be changed to their exact equivalents in cents. The seventh paragraph of Commentary .15 of Amex rule 154 provides that the specialist (subject to specified exceptions) may convert a percentage order on a destabilizing tick to establish a new bid in such size as he deems appropriate to narrow the quotation spread, provided that no such bid may be more than 1/8 point higher than the last sale. The amendment clarifies that the 1/8 point parameter applies to equities quoting in fractions and that, for equities priced in decimals, the applicable parameter would be $.10.

Rule 175 (Specialist Prohibitions). Fractional references are proposed to be changed to equivalents in cents in Amex Rule 175. References to ''point'' or ''points'' would be changed to ''dollar'' or ''dollars,'' as appropriate.

Rule 205 (Manner of Executing Odd-Lot Orders).

In Amex Rule 205, references to ''point'' or ''points'' would also be changed to ''dollar'' or ''dollar,'' as appropriate. The change to the title of Amex Rule 127 (Minimum Price Variation) is reflected in Commentary .04 of the same rule.

Rule 232 (Pre-Opening Application Rule).

The Exchange also proposes to amend Exchange Rule 232 to implement a proposed amendment to the ITS plan.

Rule 1000 (Portfolio Depositary Receipts) and 1000A (Index Fund Shares).

The references to fractional trading increments in Amex Rule 1000, Commentary .03(e) and Rule 1000A, Commentary .02(e) are proposed to be amended to clarify that these increments are subject to Amex Rule 127, Commentary .01, thus providing for prospective decimal pricing.

B. Amendments to Amex Options Rules

The Exchange has also identified various options rules that require revision in connection with the implementation of the conversion from fractions to decimals discussed above. These proposed changes are found in Exchange Rules 915, 918, 952, 958, 951C and 903G. Of these, the most significant proposed changes concern Exchange Rules 918, 958 and 952, which govern the minimum and maximum spreads for options quotations and the MPV for dealings on the Exchange in options contracts for which the underlying security is a stock. The remaining proposed changes to Exchange Rules 915, 951, and 903G convert existing fractional price references to their decimal equivalent, rounding up (down) where necessary.

Rule 915 (Criteria for Underlying Securities).

Amex Rule 915 provides eligibility criteria for underlying securities, which, among other things, require that the market price per share of the underlying security has been at least $7½ for the majority of business days during the three calendar months preceding the date of selection. This price requirement, which will remain the same, is proposed to be revised to read $7.50.

Rule 918 (Trading Rotations, Halts and Suspensions).

Exchange Rule 918, Commentary .03 provides that a specialist is required to announce to the trading crowd a price indication at the tightest bid/ask interval (1/8th of a point for options contracts quoting at $3 per share per option or higher and 1/16th of point for those quoting below $3), prior to executing a transaction in an options series during a rotation. The term ''tightest bid/ask interval'' would be amended to ''minimum price variation.'' This provision will continue to apply for options series trading in fractions. The amended rule states that the MPV for options priced in decimals pursuant to the Plan is $.05 for options issues quoted under $3 a contract, and $.10 for options issues priced at $3 and greater. Reference is made to Amex Rule 952 (Minimum Price Variations).

Rule 952 (Minimum Price Variations).

Exchange Rule 952(a) states that the minimum fractional change for options on stocks or Exchange-Traded Fund shares is one-eighth point in option contracts quoted at $3 per share per option or higher, and one-sixteenth point in option contracts quoting under $3. These parameters will continue to apply to options trading in fractions. The same rule further states that no change may be made to the MPV for options quoting in decimals that is inconsistent with the Plan or that otherwise changes the MPV for options quoting in decimals, unless such change has been filed with the SEC pursuant to Rule 19b–4(f)(6) under the 1934 Act.[8] The Exchange proposes to amend Exchange Rule 952(a) to state that the MPVs for option contracts priced in decimals, pursuant to the Plan, are $.05 MPV for options issues quoted under $3 a contract, and $.10 for options issues quoted at $3 a contract and greater. Options contracts that are not subject to decimal pricing would continue to be subject to the current Rule's minimum fractional parameters.

Rule 958 (Options Transactions of Registered Traders).

Maximum permissible spread parameters applicable to options are currently set forth in Exchange Rule 958(c). Conversion from fractions to decimals will not substantively affect Exchange Rule 958. However, the fractional spread parameters would be revised to state the same parameters expressed in cents. The proposed conversions are as follows:

[8] 17 CFR 240.19b–4(f)(6).

Current spreads expressed as fractions		Spreads following conversion to decimals	
Prevailing bid	Maximum spread	Prevailing bid	Maximum spread
<$2.00	1/4	<$2.00	$0.25
> or = $2.00, but < or = $5.00	3/8	> or = $2.00, but < or = $5.00	0.37
> $5.00, but < or = $10.00	1/2	> $5.00, but < or = $10.00	0.50
> $10.00, but < or = $20.00	3/4	> $10.00, but < or = $20.00	0.75
> $20.00	1	> $20.00	1.00

Rule 951C (Premium Bids and Offers). Exchange Rule 951C provides that, except as provided in Commentary .01, bids and offers in stock index options should be expressed in terms of a percent, with fractions of a percent expressed in sixteenths in the case of a premium of less than $300, and in eights in the case of a premium greater than $300. The amended rule provides that such fractions apply to stock index options trading in fractions, and states that bids and offers for stock index options priced in decimals would be expressed in terms of a percent expressed in an MPV of $.05, in the case of a premium less than $300, and an MPV of $.10, in the case of a premium greater than $300. The second paragraph of Exchange Rule 951C would be amended to refer to percentages in addition to fractions of a percent. Exchange Rule 951C also states that no change may be made to the percentages set forth in the Rule that is inconsistent with the Plan or that otherwise changes such percentages for options quoting in decimals unless such change is filed with the SEC, pursuant to Rule 19b–4(f)(6) under the 1934 Act.[9] Commentary .01 would also be amended to clarify that the reference to bids and offers in sixteenths refers to options quoting in fractions, for options on reduced value stock index groups having more than twelve months to expiration. Bids and offers in such options, subject to decimal pricing, would be in increments of $.05, representing a rounding down of the 1/16 parameter.

Rule 903G (Terms of FLEX Options). Paragraph (c)(2) of Exchange Rule 903G would be amended to state that exercise prices and premiums would be rounded to the nearest MPV, referencing Exchange Rule 952 (Minimum Price Variation). Language relating to rounding exercise prices to the nearest 1/8 of a dollar is proposed to be deleted.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by providing for certain securities to be quoted in decimals beginning on August 28, 2000.

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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from August 7, 2000, the date on which it was filed, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] 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 the furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will permit the Exchange to begin decimal quoting for various securities described above starting on August 28, 2000.[14]

The Commission also believes that the proposed amendments are non-controversial as they provide housekeeping changes with respect to rules that express price values in fractions being changed to decimals. The Amex has also requested that the Commission waive the 5-day pre-filing requirement. The Commission also finds good cause to waive the 5-day pre-filing requirement since the proposal is in accordance with the Plan. For these reasons, the Commission designates that the proposal become operative immediately upon filing with the Commission.[15]

[9] *Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] The Plan provides for MPVs for equities and options of no less than one cent. The June 8th Order requires the Participants to submit joint or individual studies tow months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under section 19(b) of the Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

The Plan also contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options (''Penny Pilot'') at some point in the implementation process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under section 19(b) of the Act.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–41 and should be submitted by September 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23077 Filed 9–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43234; File No. SR–BSE–00–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Provide Generic Listing Standards for Portfolio Depositary Receipts Pursuant to Rule 19b–4(e) Under the Securities Exchange Act of 1934

August 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder, notice is hereby given that on August 7, 2000, the Boston Stock Exchange, Inc. (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. On August 28, 2000, the BSE filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approval the proposal as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Chapter XXIV of the BSE rules, *Portfolio Depositary Receipts*, to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of certain products pursuant to Rule 19b–4(e) under the Act.

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 Exchange currently trades a number of securities pursuant to UTP under its listing standards for Portfolio Depositary Receipts (''PDRs'').[3] These standards, found in BSE Chapter XXIV, are similar to those maintained by other exchanges.[4] The Exchange's proposed amendments to Chapter XXIV would permit it to list and trade PDRs pursuant to Rule 19b–4(e) under the Act.[5] The Exchange believes that application of Rule 19b–4(e) to these securities will further the intent of that Rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The Exchange believes that this new procedure has the potential to reduce the time frame for bringing these securities to market or for trading them pursuant to UTP.

a. *Generic Listing Criteria.* The Exchange proposes to implement generic listing criteria to ensure that a substantial portion of the weight of a portfolio underlying PDRs is composed of securities with substantial market capitalization and trading volume. The proposed amendments to Chapter XXIV provide that the Exchange may approve for listing pursuant to Rule 19b–4(e) a series of PDRs if the components that, in the aggregate, account for at least 90% of the weight of the underlying portfolio have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Moreover, the most heavily weighted component stocks in an underlying portfolio cannot together exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the portfolio. The portfolio must include a minimum of 13 stocks,[6] and all securities in an underlying portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market). Finally, any series of PDRs traded pursuant to generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust.

Under the proposed amendments to Chapter XXIV, the underlying portfolio

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the BSE added sections to the proposed rule text on minimum price variation, surveillance procedures and the applicability of other rules. *See* Letter from Esther Radovsky, Listings Analyst, BSE, to Heather Traeger, Attorney, Division of Market Regulation, Commission, dated August 25, 2000 (''Amendment No. 1'').

[3] *See* Securities Exchange Act Release No. 39660 (February 12, 1998), 63 FR 9026 (February 28, 1998).

[4] *See e.g.,* American Stock Exchange (''Amex'') Rule 1000, *et seq.* (Portfolio Depositary Receipts) and Chicago Stock Exchange (''CHX'') Article XXVIII, Rule 25 (Portfolio Depositary Receipts).

[5] Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b) of the Act. 17 CFR 240.19b–4(e). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the portfolio is maintained by a broker-dealer, the broker-dealer must erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the portfolio must be calculated by a third party who is not a broker-dealer. The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network B.[7] Additionally, the Reporting Authority must disseminate for each series of PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series.

A minimum of 100,000 shares of a series of PDRs must be outstanding at the time trading begins. The Exchange believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum trading variation for a series of PDRs must be 1/64 of $1.00.

The Exchange will use existing surveillance procedures for the PDRs that it trades pursuant to Rule 19b–4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each series of PDRs within five business days of commencement of trading.[8]

The provisions of Chapter XXIV will apply to all series of PDRs listed under Rule 19b–4(e). In addition, PDRs will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs.

PDRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (Chapter II, Section 34A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (Chapter II, Section 34B). In exercising the discretion described in Chapter II, Section 34B, appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Further, the Exchange will issue a Bulletin to Members for each series to be listed pursuant to Rule 19b–4(e). The Bulletin will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDRs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[9] in general, and in particular, with section 6(b)(5) of the Act,[10] in that it is 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 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 impose any burden on competition. The BSE believes that the proposed rule change will encourage competition among markets by allowing more than one exchange to list and trade the products described in the proposed rule change pursuant to Rule 19b–4(e).

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 proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 BSE. All submissions should refer to File No. SR–BSE–00–10 and should be submitted by September 29, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).[11]

PDRs represent interests in a unit investment trust that holds securities that comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus.

As noted above, the Commission has previously approved Chapter XXIV of the BSE rules that permits the trading of PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the BSE rules that govern their trading. The Commission's approval of the proposed generic listing standards for these securities will allow series of PDRs that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change; pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product class, and the SRO has surveillance program for the product class.[12] The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of

[7] The BSE represents that it understands that the information described in this section will be disseminated by or through the primary exchange or another entity working with that exchange.

[8] 17 CFR 240.19b–4(e).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

these securities pursuant to UTP, and thus enhances investors' opportunities. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general protect investors and the public interest consistent with section 6(b)(5) of the Act.[13] The Commission notes that while the proposal will reduce the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs under Rule 19b–4(e). All series of PDRs listed under the generic standards will be subject to the full panoply of BSE rules and procedures that now govern the trading of existing PDRs on the Exchange or pursuant to UTP. Accordingly, any new series of PDRs listed and traded under Rule 19b–4(e) will be subject to BSE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the BSE has developed specific listing criteria for series of PDRs qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with section 6(b)(5) of the Act.

In addition, as previously noted, all series of PDRs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the BSE to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the BSE flexibility to delist PDRs if circumstances warrant such action.

The BSE will rely upon existing BSE surveillance procedures governing PDRs and equities for PDRs listed under the generic standards. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs under the generic standards. Accordingly, the commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.[14] The Exchange further represents that it will file form 19b–4(e) with the commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs. Members and member organizations will be required to provide to all purchasers of PDRs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by a customer.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs. The circular also will inform members of their responsibilities under Chapter XXIV of the BSE rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series and are consistent with section 6(b)(5) of the Act.[15]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and CHX, Chapter XXVIII, Rule 25 (PDRs), which the Commission previously approved after soliciting public comment on the proposals pursuant to section 19(b)(1) of the Act.[16] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the other filings. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[17] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–BSE–00–10), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (Amex) and Securities Exchange Act Release No. 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (CHX).

[17] 15 U.S.C. 78s(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43227; File No. SR–CBOE–00–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Codify the CBOE's Existing Policy Prohibiting Harassment and Certain Other Similar Improper Trading Practices

August 30, 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 August 11, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to codify the Exchange's existing policy prohibiting harassment and certain other similar improper trading practices.

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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the Exchange's existing policy prohibiting harassment and certain other similar improper trading practices, that has historically been set forth in Exchange Regulatory Circulars.[5] These circulars, which specifically address issues involving collusion, harassment, and intimidation, have stressed to the CBOE membership that such activities are considered to be conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 4.1. Accordingly, members and those persons associated with members engaging in such activities are subject to disciplinary action by the CBOE Business Conduct Committee as violations of CBOE Rule 4.1. The Exchange has, in fact, successfully brought several disciplinary actions, in furtherance of its obligations as a self-regulatory organization, involving violations of this longstanding policy. Furthermore, the Exchange has periodically made this conduct the subject of mandatory member education programs.

The CBOE's existing policy set forth in its regulatory circulars provides that among the prohibited activities are agreements or understandings among members not expressly provided for in the Exchange's rules that have as their intended purpose or effect the lessening of competition on the Exchange, as well as any expressions or other acts intended to discourage a member from making competitive markets in a manner permitted by the Exchange's rules. There are many specific types of conduct that are prohibited by the Exchange's policy, as it has been detailed in Regulatory Circulars RG 00–30 and RG 97–167 and which is being codified in the CBOE rules.

Although the policy is firmly grounded within the scope and meaning of CBOE Rule 4.1, the Exchange believes that codifying the policy in the CBOE rules will serve to highlight the policy to CBOE members and reinforce the Exchange's prohibition on any such anti-competitive conduct. To this end, the Exchange is codifying the policy in new CBOE Rule 4.19 (Prohibition Against Harassment) to explicitly provide that harassment, threats, intimidation, collusion, refusals to deal, or retaliation that have the intended purpose or effect of discouraging a member or other market participant from acting, or seeking to act, competitively are prohibited and shall be deemed conduct inconsistent with just and equitable principles of trade under CBOE Rule 4.1. The new CBOE Rule 4.19 also provides that among the many types of conduct that are prohibited, and which shall be deemed conduct inconsistent with just and equitable principles of trade, are harassment, threats, intimidation, collusion, refusals to deal, or retaliation against any person or entity in connection with: (i) A listing proposal made by such person or entity to any exchange or other market; (ii) such person's or entity's advocacy or proposal concerning listing or trading on any exchange or market; and (iii) such person or entity making markets in or trading any option on any exchange or other market, that have the intended purpose or effect of discouraging such person or entity from acting, or seeking to act, competitively.

2. Statutory Basis

Because the proposed rule change will codify the Exchange's long-standing policy regarding the Exchange's prohibition against harassment and other similar practices, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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 constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the

[5] *See* CBOE Regulatory Circulars RG 00–30 and RG 97–167.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Act[8] and subparagraph (f)(1) of Rule 19b–4 thereunder.[9] 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 therefore with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statement 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–00–36 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23030 Filed 9–7–00; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 24019b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43238; File No. SR–CBOE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Incorporated To Facilitate the Conversion to Pricing in Decimals

August 31, 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 March 6, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. The Exchange filed amendments to the proposed rule change on August 7, 2000 and August 16, 2000, respectively.[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 of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to conform to the securities industry's Decimals Implementation Plan submitted to the Commission on July 24, 2000, and to facilitate the conversion to pricing in decimals. The text of the proposed rule change is available at the Commission and the CBOE.

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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter dated August 7, 2000, from Angelo Evangelou, Attorney, Legal Division, CBOE, to Alton Harvey, Office Head, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Amendment No. 1 converts the filing to a non-controversial filing under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder and requests the Commission to waive the 5 day pre-filing notice requirement and the 30-day operative period. Amendment No. 1 also updates the background material set forth in Item II.A of this notice and makes certain changes to the proposed rule text. Amendment No. 1 replaces and supersedes the original filing in its entirety. *See also* Letter dated August 15, 2000, from Angelo Evangelou, Attorney, Legal Division, CBOE, to Alton Harvey, Office Head, Division, Commission (''Amendment No. 2''). Amendment No. 2 amends CBOE Rule 30.72 to conform the rule to a recent proposed amendment to the Intermarket Trading System Plan (''ITS Plan'') relating to decimal pricing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. On January 28, 2000, the Commission issued an order directing the national securities exchanges and the National Association of Securities Dealers, Inc. (''Participants''), pursuant to Section 11A(a)(3)(B) of the Act,[4] to jointly submit a decimalization implementation plan.[5] That order prescribed a timetable for the Participants to begin pricing some equity securities, and options on those equity securities, in decimals by July 3, 2000, and all equities and options in decimals by January 3, 2001. However, on March 6, 2000, the National Association of Securities Dealers, Inc. announced that the Nasdaq Stock Market, Inc. (''Nasdaq'') would not have sufficient capacity to meet the target dates for implementation. Subsequently, on April 13, 2000, the Commission issued an order staying the original deadlines for decimalization.[6]

On June 8, 2000, the Commission issued another order (''Order'')[7] requiring the Participants to act jointly in planning, discussing, developing, and submitting to the Commission a plan that will begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000 (''Plan''). The Commission directed the Participants to submit the Plan to the Commission by July 24, 2000 and further directed each Participant to file the rule changes necessary to implement the phase-in plan.

As part of the Order, the Commission requires the full implementation of decimal pricing in all exchange-traded and Nasdaq equity securities and options to be completed no later than April 9, 2001, and that the Participants submit within two months after full implementation (individually or jointly) a study to the Commission regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security. Further, within thirty days after submitting the study, and absent Commission action, the Participants individually must submit proposed rule

[4] 15 U.S.C. 78k–1(a)(3)(B).

[5] *See* Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5003 (Feb. 2, 2000).

[6] *See* Securities Exchange Act Release No. 42685 (April 13, 2000), 65 FR 21046 (April 19, 2000).

[7] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

changes to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets. The Order will be effective until the Commission has acted on those proposed rule changes filed by the individual Participants establishing the minimum increments or until otherwise ordered by the Commission.

The Plan, which was submitted on July 24, 2000, recommends a phased-in implementation for the conversion to decimal pricing that reduces the risk to the investing public, issuers, Participants, utilities, and member firms. This implementation period will begin on August 28, 2000 and will end with full implementation of decimal pricing for all equities and options on or before April 9, 2001. The Plan also requires a Minimum Price Variation (''MPV'') to be applied through the last day that the Plan is in effect. The Plan's MPV schedule for quoting is as follows: for equity issues—$.01 MPV; for option issues quoted under $3 a contract—$.05 MPV; and, for option issues quoted at $3 a contract and greater—$.10 MPV. A penny-pilot for options may be established during the implementation period pursuant to the Plan.[7] The Plan will remain in effect until the Commission approves rules for each Participant that designate the minimum increment by which equities and options are quoted, or until any other date identified by the Commission.

The Plan further provides that decimal pricing be implemented pursuant to several phases. The initial phase, to begin on Monday, August 28, 2000, provides that a minimum of 10 to 15 exchange-listed equity issues, and options on those equities, will quote in decimals (per the recommended quote MPV scheduled noted above) and that the Participants, with the cooperation of other market participants, will evaluate the industry's transition to decimals. Subsequently, on September 25, 2000, approximately 50 to 100 exchange-listed equity issues, and options on those equities, will begin quoting in decimals provided the initial phase of the transition was successful. The Participants will continually evaluate the transition to decimal pricing and its impacts on the industry, especially as they relate to capacity, liquidity and trading patterns.

The next phase will commence after October 2000. If the Participants determine, after consultation with certain market participants and the Commission, that the Participants are technically prepared for full decimals implementation and that such implementation would not cause adverse impacts to the investing public, the Participants may elect to fully convert all exchange-listed issues and/or all option issues (both exchange-listed and Nasdaq-listed) to decimal quoting (per the recommended quote MPV schedule noted above). The Participants may also elect to implement a penny pilot in selected option issues during this phase pursuant to the Plan. The Plan provides that any decision to fully convert exchange-listed issues and/or all options or to implement a penny pilot on options must be made during the period between November 2000 and April 2001, and a notice would be widely disseminated by the Participants and the Securities Industry Association to the industry and the investing public at least 30 calendar days before such implementation.

The Plan further requires an initial phase of limited Nasdaq equity issues, and options on those issues if not already quoting in decimals, to begin quoting in decimals on or before March 12, 2001. Lastly, the Plan provides that if, after consultation with the interested market participants and the Commission, the Participants believe that the Participants and certain other market participants are technically prepared for full implementation and that it would not cause adverse impacts to the investing public, the Participants would recommend that full implementation of decimal quoting for equities and options begin on or before April 9, 2001 and continue through the last day that the Plan is in effect. The Participants, with the cooperation of an industry evaluation team, would evaluate the industry's transition to full decimal pricing in all issues and joint and/or independent studies would also evaluate the impact of decimal pricing.

Proposed Changes. The purpose of the proposed rule change filing is to comply with the Order and facilitate the industry's conversion to decimal pricing. The proposed rule change is designed to allow for the implementation of the Plan and thereby facilitate the eventual conversion to decimal pricing by (1) eliminating virtually all references to fractions throughout the CBOE's option and stock rules; (2) allowing for certain option classes to begin quoting in decimals in accordance with the Plan; and (3) permitting certain option classes to continue to be quoted in fractions during the phase-in period, if necessary.

A large number of the references to fractions in the Exchange's rules are used in the context of examples to illustrate the application of various Exchange rules. In such cases, the Exchange has replaced the fractions with their decimal equivalents. In other instances, references are made to fractions to describe minimum tick increments (*e.g.* CBOE Rule 6.74(a)(ii)(A)). In those cases, the terms ''fraction'' or ''fractional'' are replaced with language that would allow for pricing in decimals or fractions.

Fractions are also used in the CBOE rules to describe bid/offer parameters. For example, Rule 8.7. (Obligations of Market Makers) requires CBOE market makers to provide markets with bid/ask differentials no greater than certain fractional increments based on the bid price (*e.g.* when the bid is at least $2 but no more than $5, the spread can be no greater than ½ of $1). Again, in these instances the Exchange is proposing to convert the fractions to their decimal equivalents. However, in instances where the decimal equivalent of a fraction equals a number that extends more than two places to the right of the decimal point (*e.g.* ⅜=.375), the Exchange has rounded the decimal equivalent to a number that is only two places to the right of the decimal point (*e.g.* ⅜ is rounded to .40) in a manner that would also allow for pricing in $.01, $.05 or $.10 minimum increments, as applicable in accordance with the Plan. This was done to ensure that the Exchange could fully comply with the requirements of the Plan and to reduce any potential system burdens.

The Exchange believes that the proposed rule change would allow for quoting in decimals or fractions until decimal pricing is completely implemented. To that end, there are certain rules where references to fractions will remain unchanged, at least until the completion of decimal pricing implementation. For example, CBOE Rule 24.8 (Meaning of Premium Bids and Offers) provides that with respect to index options, bids and offers shall be expressed in terms of ''dollars and fractions or dollars and decimals per unit of the index.'' To the extent that some or all CBOE index options may

[7] The Plan contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options (''Penny Pilot'') at some point in the implementation process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under Section 19(b) of the Exchange Act.

continue to be priced in fractions beyond September 2000, the reference to bids and offers being expressed in terms of dollars and fractions will remain in place.

The Exchange is also proposing to amend CBOE Rule 6.42 (Minimum Increments for Bids and Offers). Currently, this rule provides that, among other things, bids and offers for all option series trading at or above $3 be expressed in eighths of $1, and that bids and offers for all option series trading below $3 be expressed in sixteenths of $1, unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular series. Furthermore, Interpretation and Policy .03 states that the Exchange may determine that bids or offers in all series of options on the Dow Jones Industrial Average shall be expressed in sixteenths of $1.

The CBOE proposes to amend Rule 6.42 to explicitly state and give effect to the minimum price increments mandated by the Plan. Thus, to the extent an option class is pricing in decimals, the MPVs would be as follows: for options quoting under $3 a contract, the MPV would be $.05; and for options quoting under $3 a contract, the MPV would be $.05; and for options quoted at $3 a contract or greater, the MPV would be $.10. Proposed Interpretation and Policy .04 under Rule 6.42 provides that the Exchange would price options in decimals or fractions in accordance with the Plan until the Plan is no longer effective. Further, the Exchange would not exercise its ability to institute smaller increments than those stated in proposed Rule 6.42 (either via the Board of Directors or the appropriate Floor Procedure Committee for a particular options contract) throughout the duration of the Plan unless prescribed by the Plan.[8]

Lastly, the Exchange proposes to amend its rules governing trading in stocks, warrants and other instruments that may be traded on the Exchange and to which Chapter 30 of the CBOE rules applies to eliminate references to fractions. As part of these proposed changes, and in accordance with the Plan, the Exchange would require bids/offers in stocks and other non-option securities governed by CBOE Chapter 30 to have a $0.01 MPV. As with options, the Exchange would not exercise its ability to institute smaller increments than what is stated in proposed Rule 30.33 (via the Board of Directors) throughout the duration of the Plan unless prescribed by the Plan.[9] Also, the proposed rule changes provides that the minimum increment for Index Portfolio Receipts (''IPRs'') and Index Portfolio Shares (''IPSs'') will be $.01. Moreover, the Exchange is proposing to amend Rule 30.72 (Pre-Opening Application Rule) to conform the rule to recent proposed changes to the ITS Plan relating to decimal pricing.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5)[12] in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,[13] it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder. 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.

The CBOE has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the CBOE is able to operate in accordance with the terms and conditions of the Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–00–07 and should be submitted by September 29, 2000.

[8] Rule 6.42 currently grants the Exchange's Board of Directors authority to establish minimum price increments for options traded on the Exchange.

[9] The Plan provides for MPVs for equities and options of no less than one cent. The Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

[10] *See* Amendment No. 2, *supra* n.3.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] The Exchange requested the Commission to waive the 5 day pre-filing notice requirement and the 30-day operative period. *See* Amendment No. 1, *supra* n. 3.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23075 Filed 9–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43232; File No. SR–NASD–00–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Decimal Pricing for Listed Securities

August 30, 2000.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc., (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 24, 2000, Nasdaq amended the proposed rule change.[3] Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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

On June 8, 2000, the Commission ordered the national securities exchanges and the NASD (''Participants'') to submit a phase-in plan to the Commission July 24, 2000 providing for decimal pricing in exchange-listed securities and options by September 5, 2000, and for phasing in of decimal pricing for at least some Nasdaq securities by march 12, 2001, with decimalization extended to all exchange-listed securities, options and Nasdaq securities by April 9, 2001.[7] The June 8th Order also requires the exchanges and NASD file by August 7, 2000 rule changes necessary to implement the Plan.

The Participants have developed recommendations for a Phase-In Period for conversion to decimal pricing. These recommendations are contained in the Plan, which was submitted to the Commission on July 24, 2000. This Phase-In Period, which will consist of four Phases, will begin on August 28, 2000, and will end with full implementation of decimal pricing for all equities and options on or before April 9, 2001.

Nasdaq proposes to modify various NASD rules to support the commencement of the limited decimal pilot for Exchange-listed issues scheduled to start on August 28, 2000, as provided for in the Plan. Nasdaq also proposes to amend the appropriate rules to conform to proposed changes to the Intermarket Trading System (''ITS'') Plan. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[8] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

IM–2230. ''Third Market'' Confirmations

Members who act as brokers for customers in transactions in listed securities in the ''third market,'' and members who make markets in such securities, have sought clarification and uniformity regarding the disclosures to be made to customers in situations in which the third market firms had confirmed to the retailing member plus or minus a differential, e.g., ''20 plus ⅛'' or ''20 minus ⅛ *for securities trading in fractions, or ''$20 plus $.10 or $20 minus $.10 for securities trading in decimals.''* In some such cases the confirmation from the retailing member to the customer has indicated that the transaction was effected for the customer at a price of 20 and that the total commission paid by the customer was received by the retailing member, and it failed to disclose that the retailing member, in effect, absorbed the ⅛ *or $.10* differential charged by the third market firm.

In cases such as those described above, where the retailing member effects an agency transaction for his customer with a third market firm at a price which is in line with the then current price on the exchange plus or minus a differential, with the retailer absorbing the differential charged by the third market firm, the following legend should be used by the retailing member to insure adequate disclosure on the confirmation to the customer:

We executed this transaction for you with a dealer who confirmed to us at the above price, plus (in the event you purchased) or less (in the event you sold) [a fraction of * * *] * * * *cents* per share. This [fraction] *amount* was absorbed by us out of the amount shown as our commission. Full details of this transaction are available upon request. *The fractional amount absorbed may be shown, for example, as ⅛ or written one-eighth.

Failure to send an appropriate confirmation which conforms to the provisions hereof may involve not only conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, but also violations of rules of the Commission, particularly the confirmation rule, SEC Rule 10b–10.

* * * * *

3220. Adjustment of Open Orders

(a) No change.

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used (*e.g.,* if a market has minimum quotation variations of 1/16 or 1/32 of a dollar *for securities trading in fractions,* depending on the price of the security, *or $.01 for securities trading in decimals,* then the adjustment to open orders shall be in increments of 1/16 of a dollar *for issues trading in fractions, and $.01 for issues trading in decimals);*

(2)–(3) No change.

(b)–(e) No change.

3370. Prompt Receipt and Delivery of Securities

(a) No change.

(b) (1)–(4) No change.

(5) ''Bona Fide Fully Hedged'' and ''Bona Fide Fully Arbitraged''

In determining the availability of the exemption provided in paragraph (b)(2)(B) above and in Rule 11830 from short sale requirements for ''bona fide fully hedged'' and ''bona fide fully arbitraged'' transactions, the following guidelines shall apply. These guidelines are for illustrative purposes and are not intended to limit the Association's ability to determine the proper scope of the terms ''bona fide fully hedged'' or ''bona fide fully arbitraged'' pursuant to this provision, on a case-by-case basis.

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Thomas P. Moran, Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq''), to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation (''Division''), Commission, dated August 24, 2000 (''Amendment No. 1''). In Amendment No. 1, Nasdaq replaced the proposed rule text that was originally filed in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Commission agreed to waive the 5-day pre-filing notice requirement because the proposal implements decimal pricing pursuant to the ''Decimals Implementation Plan for the Equities and Options Markets'' (''Plan'') submitted to the Commission on July 24, 2000.

[7] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) (''June 8th Order'').

[8] 17 CFR 240.19–b4(f)(6)(iii).

(A) Bona Fide Fully Hedged

The following transactions shall be considered bona fide fully hedged:

(i) Short a security and long a convertible debenture, preferred or other security which has a conversion price at or in the money and is convertible within ninety days into the short security.

Example: Long ABCD Company 9% convertible subordinated debentures due [1998] *2003.* Each debenture is convertible into common at $27.90 per share of common equal to 35.842 shares of common per 1M debenture.

• With the price of the ABCD at 8¾–9 *or 8.75–9* and a short position of 100 shares of ABCD the short position would not be exempt.

• If the price of ABCD was $28 with a short position of 100 shares, 35 shares would be exempt and the remaining 65 shares would not be exempt.

(ii) Short a security and long a call which has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security.

Example: Long 1 call of EFGH *at a price of either* [(]44 ⅛[)] *or $44.10* with a strike price of 40 expiring within 90 calendar days.

• With the circumstances as above 100 shares would be exempt.

• If the strike price was 50 a short position of 100 shares would not be exempt.

• With any strike price and the call expiring in more than 90 days any short of the common would not be exempt.

(iii) Short a security and long a position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are ''out of the money,'' then the short position shall be exempt up to the market value of the long warrants or rights.

Example: Long 100 warrants of IJKL (IJKLW: 2¼–2¾ *or 2.25–2.75*). Each warrant is exercisable into 1 share of common at $2. (IJKL: 4–4½ *or $4–4.50*).

• With the circumstances as above a short position of 100 shares would be exempt.

• If the price of IJKL is $1.50 and the market value of long warrants is ¼ *of a point, or $.25,* a short position of 16 shares would be exempt.

(B) Bona Fide Fully Arbitraged

The following transactions shall be considered bona fide fully arbitraged:

(i) No change.

(ii) Long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the securities.

Example: Long 100 shares of MNOP (MNOP: 51–51¼ *or 51.00–51.25*) which is being acquired by QRST Corp. (QRST: 52⅛–52⅜ *or 52.10–52.30*) at the rate of 1.15 shares per MNOP share.

• If the exchange is to take place within 90 days then a short of 115 shares of QRST would be exempt from the mandatory buy-in. Also, if the exchange was to take place at a date later than 90, all short positions in the above example would be subject to the mandatory buy-in.

(c) No change.

* * * * *

Intermarket Trading System/Computer Assisted Execution System

Rules 5210. through 5230. No Change.

Rule 5240. Pre-Opening Application—Opening by ITS/CAES Market Maker the pre-opening application enables an ITS/CAES Market Maker or ITS Participant Exchange in any participant market who wishes to open his market in an ITS Security to obtain through the ITS System or CAES, any pre-opening interest of an ITS Participant Exchange or other ITS/CAES Market Makers registered in that security and/or market makers in other participant markets.

(a) Notification Requirement—Applicable Price Change, Initial Notification

(1) Whenever an ITS/CAES Market Maker, in an opening transaction in any ITS/CAES Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change'' (as defined below), he shall notify the other Participant markets of the situation by sending a ''pre-opening notification'' through the System. Thereafter, the ITS/CAES Market Maker shall not open the security in his market until not less than three minutes after his transmission of the pre-opening notification. The ''applicable price changes'' are:

Security	Consolidated closing price	Applicable price Change (more than)
Network A	Under $15	⅛ point.
	$15 or over [*]	¼ point.[1]
Network B	Under $5	⅛ point.
	$5 or over	¼ point.[2]

For transactions involving securities trading in decimal-based increments, the ''applicable price changes'' are:

Security	*Consolidated closing price*	*Applicable price Change (more than)*
Network A	*Under $15*	*$0.10*
	$15 or over	*[1] 0.25*
Network B	*Under $5*	*0.10*
	$5 or over	*[2] .25*

[1] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one [point] dollar.

[2] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

(2) A pre-opening notification shall:

(A) be designated as a pre-opening notification (POA);

(B) identify the ITS/CAES Market Maker and the security involved; and

(C) indicate the ''applicable price range'' by being formatted as a standardized pre-opening administrative message as follows: POA MMID/XYZ (RANGE)

(3) The price range shall not exceed the ''applicable price range'' shown below:

Security	Consolidated closing price	Price range
Network A	Under $50	½ point.
	$50 or over [**]	1 point.[3]
Network B	Under $10	½ point.

Security	Consolidated closing price	Price range
	$10 or over	1 point.[4]

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the ''applicable price range'' shown below:

Security	*Consolidated closing price*	*Price range*
Network A	*Under $50*	*$0.50*
	$50 or over	*[3] 1.00*
Network B	*Under $10*	*0.50*
	$10 or over	*[4] 1.00*

[3] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two [points] dollars.

[4] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (*e.g.,* a 1/8 − 5/8 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8, but not if the closing price were 1/4 or 3/8 or 1/2).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15 − 40.65 price range would be permissible if the previous day's consolidated closing price were 40.15 − 40.65, but not if the closing price were within the price range of 40.16 − 40.64).

(b) Subsequent Notifications, (b)(1) through (b)(2)(ii) No Change.

(B) Notwithstanding the preceding sentence, in situations where the price range is an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the ''cancellation'' notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30–30 1/2; 30 1/8–30 5/8; or 30 1/4–30 3/4. It is then determined that the stock will open at 29 3/4 or 29 7/8. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/8, or 30 1/4, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

Example for Decimal-Based Securities: CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60. It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30.–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

(3) Participation as Principal Precluded (''Second Look'').

If a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as a principal in the opening transaction (*e.g.* his responding principal interest is to sell at price 1/8 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a ''second look'' notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (*i.e.,* the parenthetical example above, the total amount of the security that he would have to sell at the 1/8 better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. his responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a ''second look'' notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (*i.e., the parenthetical example above, the total amount of the security that he would have to sell at the .01 better price to permit the opening transaction to occur at that price).*

(c)–(i) No Change.

5250. Pre-Opening Application—Openings on Other Participant Markets (a) Pre-Opening Responses:

Whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account (''P'') and as agent for orders left with him (''A''), at each price level within the price-range indicate in the pre-opening notification (*e.g.,* 40 3/8), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in the pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and shown the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account (''P'') and as agent for orders left with him (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40), reflected on a netted share basis.

The pre-opening response shall be formatted as follows: POR (MMID) BUY (SELL) A–P 40.3/8

For securities trading in decimal-based increments the pre-opening response shall be POR (MMID) BUY (SELL) A–P 40.40

The response may also show market orders separately.

(b)–(f) No Change.

Rules 5260. through 5265. No Change.

* * * * *

6300. Consolidated Quotation Service (CQS)

6310. No Change.

6320. No Change.

6330. Obligations of CQS Market Makers

(a) No Change.

(b)–(d) No Change.

(e) Minimum Price Variation for Decimal-based Quotations

(1) The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals

Implementation Plan for the Equities and Options Markets shall be $0.01.

6340. through 6370. No Change.

* * * * *

6400. Reporting Transactions in Listed Securities

6410. Definitions

(a)–(h) No Change.

6420. Transaction Reporting

(a)–(c) No Change.

(d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 less a commission of $12.50;

REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 less a commission of $12.50;

BUY as agent 100 shares at 40 plus a commission of $12.50;

REPORT 100 shares at 40.

(3)(A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.

Example: BUY as principal 100 shares from another member at 40 (no mark-down included).

REPORT 100 shares at 40.

Example: BUY as principal 100 shares from a customer at 39¾, which includes a ⅛ mark-down from prevailing market of 39⅞;

REPORT 100 shares at 39⅞.

Example: BUY as principal 100 shares from a customer at 39.75, which includes a $0.10 mark-down from prevailing market of $39.85;

REPORT 100 shares at 39.85.

Example: SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

Example: SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

(B) Exception: A ''riskless'' principal transaction in which a member that is not a market maker in the security after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down. A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

Example: BUY as principal 100 shares from another member at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus mark-up of $12.50;

REPORT 100 shares at 40.

Example: BUY as principal 100 shares on an exchange at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus a mark-up of $12.50.

DO NOT REPORT (will be reported by exchange).

(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq proposes to modify various NASD Rules to support the commencement of the limited decimal pilot for Exchange-listed issues scheduled to start on August 28, 2000, pursuant to the Plan. The Minimum Price Variation (''MPV'') for Exchange-listed securities trading pursuant to the pilot program under the Plan would be $.01. Nasdaq also proposes amendments to various NASD rules to implement the pilot program in Exchange-listed securities under the Plan. Further, Nasdaq proposes to amend the appropriate rules to conform to proposed changes to the ITS Plan.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and in general, to protect investors and the public interest.

[9] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement Burden on Competition

Nasdaq 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from August 7, 2000, the date that the proposal was filed, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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 the furtherance of the purposes of the Act.[12]

Nasdaq has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal, as amended, to become immediately operative upon filing. Acceleration of the operative date will permit Nasdaq to implement the pilot program of decimal quoting in Exchange-listed securities under the Plan starting on August 28, 2000.[13]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(F)(6).

[12] The Commission considers the abrogation period to begin on the date the last substantive amendment is filed with the Commission. In this case, Nasdaq filed Amendment No. 1 on August 24, 2000.

[13] The Plan provides for MPVs for equities and options of no less than one cent. The June 8th Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the

The Commission also believes that the proposed amendments are non-controversial as they provide housekeeping changes with respect to rules that express price values in fractions being changed to decimals. Nasdaq has also requested that the Commission waive the 5-day pre-filing requirement. The Commission also finds good cause to waive the 5-day pre-filing requirement since the proposed rule amendments are in accordance with the Plan. For these reasons, the Commission designates that the proposal, as amended, become operative immediately upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–46 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23027 Filed 9–7–00; 8:45 am]

BILLING CODE 8010–01–M

study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

[14] For purposes only of accelerating the operative date of this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43230; File No. SR–NYSE–00–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Decimal Pricing

August 30, 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 3, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Exchange amended the proposal on August 7, 2000.[3] The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various NYSE rules, as listed below, to implement decimal pricing, as provided for in the Plan. The Exchange also proposes to amend NYSE Rule 15 to make it conform to a proposed amendment to the Intermarket Trading System (''ITS'') Plan. The NYSE has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[7] The text of the proposal is available at the NYSE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Daniel P. Odell, Assistant Secretary, NYSE, to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation (''Division''), Commission, dated August 7, 2000 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Commission agreed to waive the 5-day pre-filing notice requirement because the proposal implements decimal pricing pursuant to the ''Decimals Implementation Plan for the Equities and Options Markets'' (''Plan'') submitted to the Commission on July 24, 2000.

[7] 17 CFR 240.19b–4(f)(6)(iii).

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 NYSE 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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 8, 2000, the Commission ordered the national securities exchanges and the National Association of Securities Dealers, Inc. (''NASD'') to submit a phase-in plan to the Commission by July 24, 2000 providing for decimal pricing in exchange listed securities and options by September 5, 2000, and for phase-in of decimal pricing for at least some Nasdaq securities by March 12, 2001.[8] The June 8th Order also requires the exchanges and the NASD to file by August 7, 2000 rule changes necessary to implement the Plan.

Phase I will begin on August 28, 2000. The Exchange will begin quoting on that date seven listed securities in decimals on a pilot basis. The seven listed securities and their trading symbols are: Anadarko Petroleum Corp. (APC); Forest City Enterprises Inc. Class A (FCE A); Forest City Enterprises Inc. Class B (FCE B); FedEx Corp. (FDX); Gateway Inc. (GTW); Hughes Supply Inc. (HUG); and MSC Software Corp. (MNS).

Quoting in all other listed securities will continue in fractions of 1/16 of a dollar. After approximately one month, the pilot will be expanded to include approximately 50 stocks. Additional expansion of the program will take place after extensive evaluation by the Exchange and other securities industry participants. It is anticipated that decimal pricing will be extended to all listed securities in the first quarter of 2001.

The Exchange proposes to amend various NYSE rules, changing references from fractions to decimals within the rules to accommodate the implementation of decimal pricing in accordance with the Plan. Specifically, the Exchange proposes to amend NYSE

[8] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) (''June 8th Order'').

Rules 15, 62, 64, 72(b), 79A.30, 105, 123A.30, 123A.40, 192, and 440B.15. The Exchange represents that if an Exchange rule uses a fraction of ¼, the Exchange proposes to amend the reference to $.25 for those stocks quoting in decimal variations. Where the reference is a fraction that does not convert to a two-place decimal, *e.g.,* ⅛, the Exchange proposes in most cases to amend the reference to round down the reference to the nearest multiple of $.05 for ease of reference. Thus ⅛ (0.125) would become $.10; ⅜ (0.375) would become $.35 for those stocks quoting in decimal variations. However, references in NYSE Rule 440B.15 to 1/32 and 2/32 would be rounded to $.05 and $.10, respectively, for ease of reference.

Most of the fractional references in the rules of the Exchange are for illustrative purposes only. However, the Exchange has reviewed the impact that the proposed changes will have on the operation of those rules where the reference is not merely used as an example, and has concluded that the change in the rule to a decimal amount, as outlined above, is justified. For example, NYSE Rule 64 requires that Floor Officials approve non-regular way trades [9] in circumstances where the execution price will be more than 2/16 away from the regular way bid or offer. The Exchange proposes to amend the requirement for Floor Official approval to $.10 for those stocks priced in decimal variations. The Exchange believes this will provide ample regulatory oversight for these orders at this level.

The proposal will apply only to transactions in those stocks that are designated by the Exchange as eligible for decimal pricing, as stated above. The NYSE rules that are expressed in fractions will continue to apply to transactions in stocks that are currently not eligible for decimal pricing. In addition, the MPV for stocks not designated for decimal pricing will remain at 1/16.

The Exchange will announce the proposed amendments in an Information Memo that will be sent to all NYSE members and member organizations, and will publish the same on the Exchange's website.

The Exchange's proposed rule changes are as follows:

Rule 62 (Minimum Price Variation)

Exchange Rule 62 provides that bids and offers in securities traded on the Exchange will be at an MPV set by the Exchange. Notwithstanding the latter provision, the Exchange proposes to amend NYSE Rule 62 to set the MPV for decimal pricing at one cent ($.01) with respect to stocks trading on the Exchange in decimal price variations. The MPV for stocks not designated for decimal trading will remain at one-sixteenth (1/16).

Rule 15 (ITS and Pre-Opening Applications)

The Exchange proposes to amend NYSE Rule 15 to conform it to a proposed amendment to the ITS Plan.

Rule 64 (Bonds, Rights and 100 Share-Unit Stocks)

The Exchange also proposes to amend NYSE Rule 64 to reflect how Floor Official approval will be obtained for non-regular way trades for stocks trading in decimals. The 2/16 parameter would be changed to $.10 for stocks quoting in decimals in situations where Floor Official approval must be obtained on a non-regular way trade. For trades during the last calendar week of the year, the approval level would be $.25 for stocks quoting in decimals, as it is currently ¼ for stocks quoting in fractions.

Rule 72(b) (Clean Agency Cross)

Two examples have been added to NYSE Rule 72, to demonstrate how members would effect cross transactions pursuant to NYSE Rule 72(b) with respect to those securities quoting in decimals.

Examples 1 and 1a demonstrate the operation of NYSE Rule 72(b) in MPV markets. Examples 2 and 2a demonstrate the operation to Rule 72(b) in markets where the spread in the quotation is greater than the MPV.

Rule 79A.30 (Miscellaneous Requirements on Stock and Bond Market Procedures)

The Exchange proposes to amend NYSE Rule 79A.30 to illustrate how Floor Official approval should be obtained for those stocks quoting in decimal variations.

Rule 105 (Guidelines For Specialists' Speciality Stock Opinion Transactions Pursuant to Rule 105)

The Exchange proposes to amend NYSE Rule 105 to indicate how the rule would operate with respect to stocks quoting in decimal variations.

Rule 123A.30 (Percentage Orders)

The Exchange proposes an amendment to NYSE Rule 123A.30 to illustrate the conversion of percentage orders for stocks quoting in decimal variations. Percentage orders may be converted on a destabilizing tick if the order meets certain requirements of size (10,000 shares or more or $500,000 in market value) and the execution price of the converted percentage order is no more that ¼ point away from the last sale. The ¼ parameter would be converted to $.25 for those stocks quoting in decimal variations. Percentage orders may also be converted on a destabilizing tick to narrow a quotation spread as long as the bid is no more than ⅛ higher than the last sale. The ⅛ parameter would be changed to $.10 for those stocks quoting in decimal variations.

Rule 123A.40 (''Stop Orders'')

The Exchange proposes amending NYSE Rule 123A.40 to indicate where Floor Official approval must be obtained pursuant to the rule for stocks quoting in decimals. For example, the 2/16 parameter would be changed to $.10 (for stocks quoting in decimals) in situations where Floor Official approval must be obtained when a specialist's transaction for his or her own account elects stop orders.

Rule 192 (Part-Paid Securities)

The Exchange proposes amending NYSE Rule 192 to reflect the method of computation pursuant to the Rule, for those stocks quoting in decimal variations.

Rule 440B.15 (Short Sale Rule Interpretations)

The Exchange proposes to amend NYSE Rule 440B.15 to reflect the application of the Rule with respect to those stocks quoting in decimals. The examples in the last paragraph at which short sales in bonds may be made would be changed from 1/32 and 2/32 to $.05 and $.10 respectively, for those stocks quoting in decimal variations.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(5) [11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by providing for certain securities to be quoted in decimals beginning on August 28, 2000.

[9] A ''non-regular way'' trade is a trade that is settled in a different time frame from ''regular-way'' trades, which settle on the third business day following the transaction.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not; (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from August 7, 2000, the date on which it was amended, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, as amended, 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 the furtherance of the purposes of the Act.[14]

The NYSE has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal, as amended to become immediately operative upon filing. Acceleration of the operative date will permit the Exchange to begin decimal quoting for various securities described above starting on August 28, 2000.[15]

The Commission also believes that the proposed amendments are non-controversial as they provide housekeeping changes with respect to rules that express price values in fractions being changed to decimals. The NYSE has also requested that the Commission waive the 5-day pre-filing requirement. The Commission also finds good cause to waive the 5-day pre-filing requirement since the proposed rule amendments are in accordance with the Plan. For these reasons, the Commission designates that the proposal, as amended, become operative immediately upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the pubic 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 NYSE. All submissions should refer to File No. SR–NYSE–00–22 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23026 Filed 9–7–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] The Commission considers the abrogation period to begin on the date the last substantive amendment is filed with the Commission. In this case, the NYSE filed Amendment No. 1 on August 7, 2000.

[15] The Plan provides for MPV's for equities and options of no less than one cent. The June 8th Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Act to establish their individual chose of minimum increments by which equities or options are quoted on their respective markets.

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3285]

State of Arizona (And Contiguous Counties in California, Nevada, and Utah)

Mohave County and the contiguous counties of Coconino, LaPaz, and Yavapai in Arizona; San Bernardino County, California; Clark and Lincoln Counties in Nevada; and Kane and Washington Counties in Utah constitute a disaster area as a result of damages caused by a monsoon storm that occurred on August 16, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 2000 and for economic injury until the close of business on May 30, 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 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 328511 for Arizona, 328611 for California, 328711 for Nevada, and 328811 for Utah. For economic injury the numbers are 914300 for Arizona, 914400 for California, 914500 for Nevada, and 914600 for Utah.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 30, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–23045 Filed 9–7–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3269; Amendment #5]

State of North Dakota

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to expand the incident period for this disaster and to extend the deadline for filing applications for physical damage. The incident period is now established as beginning on April 5, 2000 and continuing through August 12, 2000. The deadline for filing applications for physical damage as a result of this disaster has been extended from August 26, 2000 to September 22, 2000.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is March 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 25, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–23044 Filed 9–7–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3289]

State of West Virginia

Lewis County and the contiguous Counties of Braxton, Doddridge, Gilmer, Harrison, Upshur, and Webster in the State of West Virginia constitute a disaster area as a result of damages caused by flash flooding that occurred on August 18, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 2000 and for economic injury until the close of business on May 30, 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 are 328906 for physical damage and 914700 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 30, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–23046 Filed 9–7–00; 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: This notice corrects the application period of Program Announcement No. OWBO–2001–15. The previous notice (Doc. 00–20873), published August 17, 2000, stated that the application period will be from late September 2001 to mid-November 2001. The correct application period will be from late September 2000 to mid-November 2000.

SUPPLEMENTARY INFORMATION: As stated in the previous notice, 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 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. 00–23047 Filed 9–7–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within

60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Employment Relationship Questionnaire—0960–0040. The SSA uses the information collected on Form SSA–7160 to determine whether the numberholder is self-employed or an employee. The respondents are applicants for Social Security Benefits and/or employers.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 19,792 hours.

2. Benefits Planning, Assistance and Outreach (BPAO) Projects—0960–NEW. On May 31, 2000, SSA announced its intention to competitively award cooperative agreements to establish community-based BPAO projects. The overall goal of the projects is to disseminate accurate information to beneficiaries with disabilities (including transition-to-work aged youth) about work incentives programs and issues related to such programs, to enable them to make informed choices about work.

The BPAO project managers will collect data from Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries who request BPAO services. The BPAO project managers and SSA will use the data to manage the projects and to determine what additional resources or other approaches may be needed to improve the process. The data is needed to determine the efficacy of the program and to ensure that those dollars appropriated for BPAO services are actually being used for SSA beneficiaries. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

BPAO projects will collect data on:

- Beneficiary background;
- Beneficiary employment;
- Beneficiary training;
- Beneficiary benefits;
- Beneficiary work incentives;
- Services to which BPAO projects refer beneficiaries; and
- BPAO activities performed.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 250,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application for Special Age 72-or-Over Monthly Payments—0960–0096. SSA collects the information on form SSA–19–F6 to determine whether an individual is entitled to Special Age-72 payments. The respondents are individuals who attained age 72 before 1972.

Number of Respondents: 10.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3 hours.

2. Request for Self-Employment Information, Request for Employee Information, Request for Employer Information–0960–0508. SSA uses the information collected on Forms SSA–L2765, SSA–L3365 and SSA–L4002 to credit the reported earnings to the proper earnings record. When W–2 wage data for an individual cannot be identified, the data is placed in the earnings suspense file, and SSA sends decentralized correspondence (DECOR) to the employee (in certain instances to the employer) in an attempt to obtain his/her correct name and Social Security Number. The respondents are employees, employers or self-employed individuals who are asked to furnish additional information for individuals for whom earnings were reported.

Number of Respondents: 3,000,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 500,000 hours.

3. State Agency Report of Obligations for SSA Disability Programs—0960–0421. The data collected on Form SSA–4513 is necessary for detailed analysis and evaluation of costs incurred by Disability Determination Services (DDS) in making disability determinations for SSA. The data collected also helps to determine funding levels for each DDS. The respondents are DDSs, which are the State agencies that have the responsibility for making disability determinations for SSA.

Number of Respondents: 54.

Frequency of Response: 4.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 216 hours.

4. Statement For Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. SSA uses form SSA–8203–BK for high-error-profile (HEP) redeterminations. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The paper form is used only when a systems limitation prevents the interview from being completed on MSSICS. When the paper form is used, a tear-off sheet (Pages 7 and 8 of the form) is given to recipients at the conclusion of a face-to-face interview or is mailed to recipients at the completion of the telephone interview. The tear-off includes information about how, what, when, where, and why SSI recipients report when there is a change in income, resources, or living arrangements. The respondents are recipients of title XVI SSI benefits.

Number of Respondents: 920,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 260,667 hours.

5. Childhood Disability Evaluation Form—0960–0568. The information collected on form SSA–538 is used by SSA and the State DDSs to record medical and functional findings concerning the severity of impairments of children who are claiming SSI benefits based on disability. The form is used for initial determinations of eligibility, in appeals, and in initial continuing disability reviews. SSA is revising the form in order to make it easier for those who use it to better record their medical and functional findings.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

6. Employment Support Representative Position: Survey of Beneficiaries and Community Organizations—0960–NEW. SSA has created a new position, the Employment Support Representative (ESR), to provide employment support information and counseling to SSA

disability beneficiaries and community organizations. The positions are established initially in a pilot program supporting 51 service areas. SSA proposes to test three models, which vary by organizational placement and assigned duties of the ESR. SSA will evaluate the models to determine which model or feature(s) of the model(s) are most effective through information we will collect from individuals and organizations who made contact with, or received services from, ESRs in each of the models during the pilot.

	Individuals	Organizations
Number of Respondents	1,332	894.
Frequency of Response	1	1.
Average Burden Per Response	10 minutes	15 minutes.
Estimated Annual Burden	222 hours	224 hours.

7. Survey of Low-Income and Disabled Children-0960–NEW. The Survey of Low-Income and Disabled Children (SOLID KIDS) is designed to collect nationally representative data on children and young adults with SSI experience, including current and previous SSI recipients and SSI applicants. To solicit information, SSA will employ two versions of the SOLID KIDS survey. One survey will be directed at children under age 17. The other, a young adult version, is designed for children who are 17 or older at the time of the survey.

The survey is designed to provide SSA with data on SSI recipients in the following areas:

- Disability and health status;
- Health care utilization;
- Health insurance coverage;
- Out-of-pocket health care expenses;
- Education and training;
- Service utilization and cost;
- Employment income assets;
- Child care; and
- Housing and transportation.

This information will allow SSA to answer policy-relevant questions, for example, the impact of welfare reform on SSI children and young adults, cost of caring for children and young adults with disabilities, transition issues for young adults with disabilities, service utilization patterns, health care access, and unmet health care needs.

The data will be used for internal research and policy evaluation, for briefings, in mandated reports to Congress, in published descriptions in the Social Security Bulletin and elsewhere. External researchers will have access to public-use files.

Respondents to the SOLID KIDS survey, children's version, will be parent's or guardian's of the sample children under age 17 at the time of the survey. The young adult version of the SOLID KIDS survey is designed for children who are 17 or older at the time of the survey. For young adults who are still living in their parents' household, the respondent will be the parent or guardian. For young adults who are living away from their parents (for example, in a group home or facility, or in their own home or apartment), the respondent will be the young adults themselves. In cases where the young adult is living outside of the parent's home and is unable to complete the survey due to disability, a proxy respondent will be selected.

Number of respondents: 9,857.

Number of Response: 1.

Average burden per response: 58 minutes.

Estimated Annual Burden: 9,528 hours.

SSA Address—Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

OMB Address—Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: August 31, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–23016 Filed 9–7–00; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is given that Subchapter S2R, the Office of Central Operations (OCO), is being amended to reflect the establishment of the Center for Security and Integrity (S2RC6) under the Associate Commissioner for Central Operations. Functions within some components in OCO are expanded or realigned. The new material and changes are as follows:

Section S2R.10 *The Office of Central Operations*—(Organization):

C. The Immediate Office of the Associate Commissioner, Office of Central Operations (OCO) (S2R).

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC):

Establish:

f. The Center for Security and Integrity (S2RC6).

Section S2R.20 *The Office of Central Operations*—(Functions):

C. The Immediate Office of the Associate Commissioner, OCO (S2R).

2. The Assistant Associate Commissioner for International Operations (S2RE).

a. The Division of International Operations (DIO) (S2RE1):

Delete the eleventh sentence, i.e., ''It designs and conducts validation and other special studies to foster integrity in the Social Security program overseas.''

3. The Assistant Associate Commissioner for Earnings Operations (S2RB).

a. The Division of Earnings Record Operations (S2RB1):

Add:

6. Provides information on all SSA-administered programs in response to telephone inquiries and requests for assistance from the public through SSA's 800 number system.

c. The Wilkes-Barre Data Operations Center (S2RB–F3):

Delete:

4. Is the central repository for SSI folders.

Add:

4. Provides information on all SSA-administered programs in response to telephone inquiries and requests for assistance from the public through SSA's 800 number system.

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC):

Amend as follows:

The Assistant Associate Commissioner for Management and Operations Support (S2RC) is responsible for the direction of six centers which perform systems, management, program, material resources, personnel management services and security and integrity support functions for OCO.

b. The Center for Management Support (S2RC2): Delete Item 3 in its entirety.

d. The Center for Material Resources Support (S2RC4):

Add:

7. Is the central repository for SSI folders.

Establish:

f. The Center for Security and Integrity (S2RC6).

1. Performs independent integrity reviews to detect and prevent employee and beneficiary fraud. Plans, develops and implements the OCO security program, conducts security reviews. Reviews potential employee and beneficiary fraud cases and determines whether cases will be referred for prosecution.

2. Serves as a liaison with auditing and investigative agencies (OIG, GAO, etc.) on matters impacting the integrity of OCO operations.

3. Designs and conducts validation and other special studies to evaluate and foster integrity in Social Security programs overseas.

4. Conducts security awareness and LSO training and is responsible for OEO procedure and administration.

5. Administers the full range of program services for Individuals of Extraordinary National Prominence (IENP).

Dated: August 30, 2000.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 00–23157 Filed 9–7–00; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records under the Privacy Act entitled SSA Administrative Sanctions Database. The proposed new system of records will maintain information SSA will use to investigate and take appropriate action in cases of individuals suspected of knowingly making false or misleading statements when pursuing claims under title II or title XVI of the Social Security Act. We also are proposing to establish 'routine use' disclosures applicable to the proposed new system of records. We invite public comments on this publication.

DATES: We filed a report of the proposed new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 28, 2000. We also requested OMB to waive the 40-day advance notice requirements for the system. If OMB does not grant the waiver we will not implement the proposal before October 7, 2000.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia G. Smith, Social Insurance Policy Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1552.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records

A. General Background

On December 14, 1999, the President signed into law the Foster Care Independence Act of 1999, Public Law 106–169. Section 207 of this law amended title XI of the Social Security Act (Act) by adding section 1129A, that provides for the imposition by SSA of a penalty on an individual who makes or causes to be made, a statement or representation of a material fact, that the person knows or should know is false or misleading, or omits a material fact that the person makes with a knowing disregard for the truth. The statement must be made for use in determining eligibility for or the amount of benefits under title II or title XVI.

In order to implement section 1129A of the Act, SSA must collect and maintain relevant information about individuals suspected of knowingly making false or misleading statements for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or title XVI. This information will be housed in a database and information about specific cases will be retrieved from the database by the Social Security number (SSN) and name of the individual. The information in the database will be used to investigate and take appropriate action against individuals who may have knowingly made false or misleading statements, and for management information purposes. The configuration of a database in this manner constitutes a 'system of records' under the Privacy Act.

B. Collection of Data

The information that will be maintained in the SSA Administrative Sanctions Database may be obtained from the individuals suspected of knowingly making false or misleading statements and from other SSA systems of records, such as the Claims Folders System, maintaining information individuals provide when applying for benefits under SSA programs. Other information will be generated as a result of the investigations that will be conducted. The SSA Administrative Sanctions Database will maintain the following types of records:

•*Information about the initial record setup:* Identification of the SSA regional office (RO) and field office (FO) that initiated the record; identifying information about the suspect such as name, Social Security number (SSN), date of birth, and address; SSA program involved—title II or title XVI, or both; type of claim event—postentitlement or initial claim; information indicating whether the case is a sanctions case; date case referred to the SSA Office of the Inspector General (OIG);

•*Information about the initial level sanctions determination:* The following data will be input by FOs and ROs: (through intranet screens)—information indicating whether sanctions will be imposed or deferred, whether the FO office is subject to early information system review (EIS) or FO is no longer subject to EIS review;

•*Information about immediate sanctions proposed:* Data such as the following will be input by the FO or RO—information indicating whether a reconsideration was filed by the individual, the date of the reconsideration and the date a reconsideration decision was sent to the individual; if benefits were withheld, the amount withheld, date of the suspension, iteration (1st, 2nd, 3rd or 3rd +) the dates sanctions began and ended, date sent for End-of-Line review, if appropriate, and results of End-of-Line Review; if the individual requests a hearing, the date of the hearing, the hearing decision, date the hearing decision sent to the individual; if a decision is made to reinstate benefits, the date 60-day notice received in FO for EIS review, the date of input to end sanctions and the date sanctions are removed. If there is Appeals Council (AC) action, the date of the AC decision, the AC decision (''A'' for affirmed, ''R'' for reversed), and date the AC decision was sent to individual.

•*Management Information:* Data identifying savings to the trust fund, general revenue and the state, realized through the imposition of administrative sanctions and the amount of overpayments incurred by individuals who gave false or misleading statements for use in determining eligibility or benefit amount under title II or title XVI.

•*Deferred Sanctions Proposed:* Data such as the following will be input by the FO when deferred sanctions have been proposed. The data gathered is similar to but less extensive than cases where immediate sanctions are proposed. Most notably, we will gather appeals data but will not gather data on benefit withholding since that action will take place at a later date. The data gathered will indicate whether a reconsideration was filed, the date the reconsideration was filed, date the reconsideration decision was sent to the

individual, the reconsideration decision; whether a hearing request was filed, the date the hearing decision was sent to the beneficiary, and the hearing decision; and date sanctions removed. If there is Appeals Council (AC) action, the date of the AC decision, the AC decision (''A'' for affirmed, ''R'' for reversed), and date the AC decision was sent to the individual.

•*Information developed by the SSA OIG:* OIG case number; date referred for criminal prosecution, whether criminal prosecution was declined or accepted (''Y/N'' indicator), and date criminal prosecution declined or accepted; date referred for civil prosecution, whether civil prosecution was declined or accepted (''Y/N'' indicator), and date civil prosecution declined or accepted; date referred for civil monetary penalty (CMP), whether CMP declined (''Y/N'' indicator), and date CMP declined/CMP imposed; date returned to the SSA FO.

C. Privacy Act Exemptions for SSA Administrative Sanctions Database Records

The information in this database constitutes material compiled for law enforcement purposes. Therefore, we propose to exempt records maintained in this proposed system of records from the requirements of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed SSA Administrative Sanctions Database

A. Proposed Routine Use Disclosures

1. Disclosure to the Office of the President for the Purpose of Responding to an Individual Pursuant to an Inquiry Received From That Individual or From a Third Party on His or Her Behalf

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in an SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

2. Disclosure to a Congressional Office in Response to an Inquiry From That Office Made at the Request of the Subject of a Record

We will disclose information under this routine use only in situations in which an individual may ask his her congressional representative to intercede in an SSA matter on his or her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

3. Information May Be Disclosed to Student Volunteers and Other Workers, Who Technically Do Not have the Status of Federal Employees, When They Are Performing Work for SSA as Authorized by Law, and They Need Access to Personally Identifiable information in SSA Records in Order to Perform Their Assigned Agency Functions

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

4. Disclosure to Contractors and Other Federal Agencies, as Necessary, for the Purpose of Assisting SSA in the Efficient Administration of its Programs

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. Nontax Return Information Which Is Not Restricted From Disclosure by federal Law May Be Disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as Amended by NARA Act of 1984, for the Use of Those Agencies in Conducting Records Management Studies

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1–4 above will ensure efficient administration of the sanctions program; the disclosures that would be made under routine use numbered 5 is required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed SSA Administrative Sanctions Database

We will maintain information about the administrative sanctions in electronic form, computer data systems, and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all entrances and exits to SSA buildings and related facilities are patrolled by security guards. Any contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data. SSA and contractor personnel, if a contractor has involvement with the system of records, having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. See 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed SSA Administrative Sanctions Database on the Rights of Individuals

We will maintain in the SSA Administrative Sanctions Database only that information that is relevant to our investigation and disposition of cases involving administrative sanctions pursuant to section 1129A of the Act. We will afford individuals suspected of

knowingly making false statements all due process and other rights to which they are entitled. Thus, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: August 28, 3000.

Kenneth S. Apfel,

Commissioner of Social Security.

09–60–0280

SYSTEM NAME:

SSA Administrative Sanctions Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, New York Regional Office, Administrative Sanctions Coordinator, Room 4032, Federal Building, 26 Federal Plaza, New York, NY 10278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals for title II and title XVI benefits who may have knowingly provided false or misleading statements for use in determining eligibility for or the amount of benefits under title II and title XVI.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following types of records are maintained in this system of records:

• Information about the initial record setup: Identification of the SSA regional office (RO) and field office (FO) that initiated the record; identifying information about the suspect such as name, Social Security number (SSN), date of birth, and address; SSA program involved—title II or title XVI, or both; type of claim event—postentitlement or initial claim; information indicating whether the case is a sanctions case; date case referred to the SSA Office of the Inspector General (OIG);

• Information about the initial level sanctions determination: The following data will be input by FOs and ROs: (through intranet screens)—information indicating whether sanctions will be imposed or deferred, whether the FO office is subject to early information system review (EIS) or FO is no longer subject to EIS review;

• Information about immediate sanctions proposed: Data such as the following will be input by the FO or RO—information indicating whether a reconsideration was filed by the individual, the date of the reconsideration and the date a reconsideration decision was sent to the individual; if benefits were withheld, the amount withheld, date of the suspension, iteration (1st, 2nd, 3rd or 3rd +) the dates sanctions began and ended, date sent for End-of-Line review, if appropriate, and results of End-of-Line Review; if the individual requests a hearing, the date of the hearing, the hearing decision, date the hearing decision sent to the individual; if a decision is made to reinstate benefits, the date 60 day notice received in FO for EIS review, the date of input to end sanctions and the date sanctions are removed. If there is Appeals Council (AC) action, the date of the AC decision, the AC decision (''A'' for affirmed, ''R'' for reversed), and date the AC decision was sent to individual.

• Management Information: Data identifying savings to the trust fund, general revenue and the state, realized through the imposition of administrative sanctions and the amount of overpayments incurred by individuals who gave false or misleading statements for use in determining eligibility or benefit amount under title II or title XVI.

• Deferred Sanctions Proposed: Data such as the following will be input by the FO when deferred sanctions have been proposed. The data gathered is similar to but less extensive than cases where immediate sanctions are proposed. Most notably, we will gather appeals data but will not gather data on benefit withholding since that action will take place at a later date. The data gathered will indicate whether a reconsideration was filed, the date the reconsideration was filed, date the reconsideration decision was sent to the individual, the reconsideration decision; whether a hearing request was filed, the date the hearing decision was sent to the beneficiary, and the hearing decision; and date sanctions removed. If there is Appeals Council (AC) action, the date of the AC decision, the AC decision (''A'' for affirmed, ''R'' for reversed), and the date the AC decision was sent to the individual.

• Information developed by the SSA OIG: OIG case number; date referred for administrative prosecution, whether such prosecution was declined or accepted (''Y/N'' indicator), and date such prosecution declined or accepted; date referred for civil prosecution, whether civil prosecution was declined or accepted (''Y/N'' indicator), and date civil prosecution declined or accepted; date referred for civil monetary penalty (CMP), whether CMP declined (''Y/N'' indicator), and date CMP declined/CMP imposed; date returned to the SSA FO.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1129A of the Social Security Act (42 U.S.C. 1320a–8).

PURPOSE(S):

Information in this system of records will be used by SSA to investigate and take appropriate action against individuals suspected of knowingly providing false or misleading information for use in determining their right to benefits under Social Security title II Old-Age, Survivors or Disability Insurance or title XVI Supplemental Security Income benefits. Instances where individuals are suspected of making false or misleading statements will be referred to the SSA Office of the Inspector General (OIG) for investigation and disposition. Information in the system of records will also be used to produce management information data and reports providing information such as:

• Number of potential sanctions cases.
• Average time from referral to return by OIG.
• Number of cases found to be not sanctionable.
• Number of cases prosecuted criminally.
• Number of cases prosecuted civilly.
• Number of cases where CMP was imposed.
• Number of cases sanctioned (available by Region and FO code).
• Number of reconsiderations filed.
• Number of reconsiderations affirmations.
• Number of reconsiderations reversals.
• Number sent for consistency review.
• Number of hearings filed.
• Number of hearing affirmations.
• Number of hearing reversals.
• Amount of benefits withheld—title II and title XVI.
• Amount of overpayments incurred—title II and title XVI.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below:

1. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

4. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs.

5. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are stored in electronic and paper form.

RETRIEVABILITY:

Records in this system are by SSN and name of the individual.

SAFEGUARDS:

This system of records is a database that is accessible via an SSA intranet website. Security measures include the use of access codes to enter the database, and storage of the electronic records in secured areas, which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. All SSA employees, including contractor personnel, having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

Claims development and tracking and management information maintained in this system are retained indefinitely or when it is determined that they are no longer needed. Means of disposal is appropriate to storage medium (*e.g.,* deletion of individual records from the electronic site when appropriate or shedding of paper records that are produced from the system).

SYSTEM MANAGER AND ADDRESS:

Regional Commissioner, Social Security Administration, New York Regional Office, Room 4032, Federal Building, 26 Federal Plaza, New York, N.Y. 10278

NOTIFICATION PROCEDURE:

Per 5 U.S.C. 552a(k)(2) the Agency is exempt from publishing procedures whereby an individual can be notified at his/her request if the system of records contains a record pertaining to him/her. These procedures are in accordance with SSA Regulations (20 CFR 401.85).

RECORD ACCESS PROCEDURES:

Per 5 U.S.C. 552a(k)(2) the Agency is exempt from publishing procedures whereby an individual can be notified at his/her request how to gain access to any record pertaining to him/her contained in this system of records. These procedures are in accordance with SSA Regulations (20 CFR 401.85).

CONTESTING RECORD PROCEDURES:

Per 5 U.S.C. 552a(k)(2), records in this system are exempt from access by the individual named in this system of records. These procedures are in accordance with SSA Regulations (20 CFR 401.85).

RECORD SOURCE CATEGORIES:

Per 5 U.S.C. 552a(k)(2), the Agency is exempt from publishing the record sources. These procedures are in accordance with SSA Regulations (20 CFR 401.85).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Exemption of this system to the access provisions is claimed under 5 U.S.C. 552a(k)(2) inasmuch as these records are investigatory materials compiled for law enforcement purposes in anticipation of a administrative proceeding. These procedures are in accordance with SSA Regulations (20 CFR 401.85).

[FR Doc. 00–23015 Filed 9–7–00; 8:45 am]

BILLING CODE 4190–11–U

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 3378]

Designation of Certain Posts for Advance Payment of Immigrant Visa Application Processing Fee

This public notice identifies the initial ten posts designated by the Deputy Assistant Secretary for Visa Services for the revised procedure for payment of the fee for the processing of an application for an immigrant visa. This notice is issued pursuant to 22 CFR 42.71, which is being amended concurrently with this Notice.

The Deputy Assistant Secretary for Visa Services hereby designates for participation in the initial stage of the new immigrant visa application processing fee payment system the Foreign Service posts in the following cities: Bogota, Colombia, Ciudad Juarez, Mexico, Freetown, Sierra Leone, Georgetown, Guyana, Guangzhou, China, Manila, Philippines, Montreal, Canada, Port au Prince, Haiti, Santo Domingo, Dominican Republic, and Tirana, Albania.

Dated: July 26, 2000.

Nancy H. Sambaiew,

Deputy Assistant Secretary for Visa Services, Department of State.

[FR Doc. 00–23116 Filed 9–7–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7894]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Ambience.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before October 10, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7894. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build

requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Ambience*. Owner: Eric Harrison.

(2) Size, capacity and tonnage of vessel. According to the Applicant: ''35 ft/12 passenger 8 tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Coastwise charters. Small breakfast, lunch, and dinner cruises within harbor. May include sunset cruising. The region can include any port from Santa Barbara, California to San Diego, California.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1962. Place of construction: Hong Kong, China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There will be no impact on current owners. To my knowledge, there are no other businesses doing this type of dinner cruise. The only other cruises I know of is on a much larger scale (*i.e.* 50 to 300 passenger vessels) in this region.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The only impact on shipyards may be an increase of business. I will need services from time to time for maintenance and purchasing parts. All impact will be of a positive nature.''

Dated: September 5, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–23118 Filed 9–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33913]

Minnesota, Dakota & Western Railway Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, Duluth, Missabe and Iron Range Railway Company, and Soo Line Railroad Company d/b/a Canadian Pacific Railway

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to assign to Minnesota, Dakota & Western Railway Company (MDW) overhead trackage rights over the Rainy Subdivision of the Duluth, Winnipeg and Pacific Railway between milepost 0, at Duluth, MN, and milepost 165.2, at Ranier, MN, a distance of approximately 165.2 miles. Additionally, the Duluth, Missabe and Iron Range Railway Company (DMIR) and the Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR), have agreed to grant MDW trackage rights. DMIR is granting MDW trackage rights to operate along DMIR's Spirit Lake Branch and Interstate Branch, between milepost 5.77, at Nevada, MN (Nopeming Junction), and milepost 17.28, near Saunders, WI, together with turnout and connecting track, a distance of 11.85 miles. CPR is granting MDW trackage rights to operate at Saunders, WI, between CPR/DMIR junction and the CPR/BNSF division of ownership at BNSF's 28th Street Yard, in Superior, WI, a distance of approximately 0.69 miles.[1]

The earliest the transaction could be consummated was August 28, 2000, the effective date of the exemption. However, the parties have stated that consummation will occur on or about December 20, 2000.

The trackage rights will permit MDW to operate directly between International Falls, MN, and Superior, WI.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

[1] Redacted versions of the trackage rights agreements between the parties were filed with the verified notice of exemption. Also, full versions of the trackage rights agreements, as required by 49 CFR 1180.6(a)(7)(ii), were filed under seal. A motion for a protective order was filed on August 18, 2000. That motion was granted and a protective order in this proceeding was served on August 30, 2000.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33913, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Martin W. Bercovici, Esq., Keller and Heckman, LLP, 1001 G Street, N.W., Washington, DC 20001.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–22785 Filed 9–7–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed new system of records entitled, ''Treasury/DO .015—Political Appointee Files.''

DATES: Comments must be received no later than October 10, 2000. The proposed system of records will be effective October 18, 2000, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Chief of Staff, Department of the Treasury, Room 3420, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Jana Carter, Department of the Treasury, (202) 622–2955. Fax: 202–622–0737.

SUPPLEMENTARY INFORMATION: A review of the filing systems maintained by the Department identified records which are maintained by names or other identifiers of individuals considered for

possible appointments to non-career positions in the Department of the Treasury.

The system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996. The proposed system of records, Political Appointee Files—Treasury/DO .015 is published in its entirety below.

Dated: August 31, 2000.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .015

SYSTEM NAME:

Political Appointee Files.

SYSTEM LOCATION:

Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may possibly be appointed to political positions in the Department of the Treasury, consisting of Presidential appointees requiring Senate confirmation; non-career Senior Executive Service appointees; and Schedule C appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may consist of the following: Referral letters; White House clearance letters; information about an individual's professional licenses (if applicable); IRS results of inquiries; notation of National Agency Check (NAC) results (favorable or otherwise); internal memoranda concerning an individual; Financial Disclosure Statements (Standard Form 278); results of inquiries about the individual; Questionnaire for National Security Positions Standard Form 86; Personal Data Statement and General Counsel Interview sheets; published works including books, newspaper and magazine articles, and treatises by the individual; newspaper and magazine articles written about or referring to the individual; and or articles containing quotes by the individual, and other correspondence relating to the selection and appointment of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302 and E.O. 10577.

PURPOSE(S):

These records are used by authorized personnel within the Department to determine a potential candidate's suitability for appointment to non-career positions within the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to: (1) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(2) A Federal, state, local or foreign agency maintaining civil, criminal or other relevant enforcement information or other pertinent information which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(6) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence and forms in file folders. Records are also maintained in electronic media.

RETRIEVABILITY:

Information accessed by last name of individual and Social Security Number.

SAFEGUARDS:

Building employs security guards. Data is kept in locked file cabinets and is accessible to authorized personnel only. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the Presidential administration during which the individual is hired. For non-selectees, records of individuals who are not hired are destroyed one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Staff, Department of the Treasury, Rm 3420, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Record notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Record notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are submitted by the individuals and compiled from interviews with those individuals seeking non-career positions. Additional sources may include The White House, Office of Personnel Management, Internal Revenue Service, Department of Justice and international, state, and local jurisdiction law enforcement components for clearance documents, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR DOC 00–23117 Filed 9–7–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in **Federal Register** page 47230, Vol. 64, No. 167, dated August 30, 1999, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith, Director, Office of Financial Institutions Policy
Steven O. App, Deputy Chief Financial Officer
Gregory A. Baer, Assistant Secretary (Financial Institutions)
Edwin L. Barber, Senior Advisor, Office of African Nations
Roger H. Bezdek, Senior Advisor for Fiscal Management
Elisabeth A. Bresee, Assistant Secretary (Enforcement)
Mary E. Chaves, Director, Office of International Trade
Marcia H. Coates, Director, Office of Equal Opportunity Program
Neal C. Comstock, Executive Secretary
Lynda Y. De La Vina, Deputy Assistant Secretary (Policy Coordination)
Edward J. DeMarco, Director, Office of Government Sponsored Enterprise Policy
Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)
Joseph B. Eichenberger, Director, Office of Multilateral Development Banks
James H. Fall, III, Deputy Assistant Secretary (Technical Assistance Policy)
James J. Flyzik, Deputy Assistant Secretary (Information Systems) and Chief Information Officer
Geraldine A. Gerardi, Director for Business Taxation
Ronald A. Glaser, Director, Office of Personnel Policy
John C. Hambor, Director, Office of Policy Analysis
Donald V. Hammond, Fiscal Assistant Secretary
Barry K. Hudson, Director, Office of Financial Management
Ellen W. Lazar, Director, CDFI Fund
David A. Lebryk, Deputy Assistant Secretary (Fiscal Operations and Policy)
Nancy Lee, Director, Office of Central and Eastern European Nations
James R. Lingebach, Director, Office of Accounting and Internal Control
Wesley W. McGrew, Director, Office of Latin American and Caribbean Nations
Mark C. Medish, Deputy Assistant Secretary (Eurasia and Middle East)
Carl L. Moravitz, Director, Office of Budget
William C. Murden, Director, Office of International Banking and Securities Markets
John M. Murphy, Director, Office of Strategic Planning
Robert R. Newcomb, Director, Office of Foreign Assets Control
Joel D. Platt, Director, for Revenue Estimating
Lisa G. Ross, Acting Assistant Secretary for Management and Chief Financial Officer
Lewis A. Sachs, Assistant Secretary (Financial Markets)
William E. Schuerch, Deputy Assistant Secretary (International Development, Debt and Environment Policy)
G. Dale Seward, Director, Automated Systems Division
Mary Beth Shaw, Director, Office of DC Pensions Project Office
Gay H. Sills, Director, Office of International Investment
John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)
Jane L. Sullivan, Director, Information Technology Policy and Management
Jonathan Talisman, Acting Assistant Secretary (Tax Policy)
Karen A. Wehner, Deputy Assistant Secretary (Law Enforcement)
Thomas C. Wiesner, Director, Corporate Systems Management
David W. Wilcox, Assistant Secretary (Economic Policy)

FOR FURTHER INFORMATION CONTACT: Barbara A. Hagle, Executive Secretary, PRB, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 6109, Metropolitan Square, Washington, DC 20220. Telephone: (202) 622–2209. This notice does not meet the Department's criteria for significant regulations.

Lisa Ross,

Acting Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 00–23086 Filed 9–7–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by October 10, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0184, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street SW, Washington, DC 20219, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You may request additional information from Jose Gabilondo, (202) 874–5335, Treasury and Market Risk Division, or a copy of the collection and supporting documentation submitted to OMB from Jessie Dunaway, Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

OMB Number: 1557–0184.

Form Numbers: MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

Abstract: This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which requires that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and

municipal securities broker/dealers and to monitor institutions entry into and exit from government and municipal securities broker/dealer activities. The OCC also uses the information in planning bank examinations.

Type of Review: Renewal of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 65.

Estimated Total Annual Responses: 3,080.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,706 burden hours.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0184, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments

Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: August 31, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–23019 Filed 9–7–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 5, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Submit written comments on or before October 10, 2000.

OMB Number: 1550–0025.

Form Number: OTS Forms 1584, 1585, 1589.

Type of Review: Revision of a currently approved collection.

Title: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

Description: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 105.

Estimated Burden Hours Per Response: 1.3 hours.

Frequency of Response: Once per transaction.

Estimated Total Reporting Burden: 137 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 00–23146 Filed 9–7–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,

September 8, 2000

Part II

Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1, 3, 5, and 10

Changes To Implement the Patent Business Goals; Final Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 3, 5, and 10

[Docket No.: 980826226–0202–03]

RIN 0651–AA98

Changes To Implement the Patent Business Goals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) has established business goals for the organizations reporting to the Commissioner for Patents (Patent Business Goals). The focus of the Patent Business Goals is to increase the level of service to the public by raising the efficiency and effectiveness of the Office's business processes. In furtherance of the Patent Business Goals, the Office is changing the rules of practice to eliminate unnecessary formal requirements, streamline the patent application process, and simplify and clarify the provisions of the rules of practice.

DATES: *Effective Dates:* This rule is effective November 7, 2000, except that the changes to §§ 1.27, 1.78, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, and 1.760, and the removal of § 1.44 are effective September 8, 2000.

Applicability Dates: Computer program listings in compliance with former § 1.96 will be accepted until March 1, 2001. After that date, computer program listings must comply with revised § 1.96. Amendments in compliance with former § 1.121 will be accepted until March 1, 2001. After that date, amendments must comply with revised § 1.121.

The new two-year limit for requesting refunds under § 1.26 will be applied to any fee paid regardless of when it was paid. For previously paid fees, the two-year time period for requesting a refund will expire on the later of November 7, 2000 or the date that is two years from the date the fee was paid.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein ((703) 305–8713) or Robert W. Bahr ((703) 308–6906), Senior Legal Advisors, or Robert J. Spar, Director ((703) 308–5107), Office of Patent Legal Administration (OPLA), directly by phone, or by facsimile to (703) 305–1013, marked to the attention of Mr. Bernstein, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231.

Additionally, the following members of OPLA may be called directly for the matters indicated:

Robert Bahr ((703) 308–6906): §§ 1.22, 1.25, 1.26, 1.53, 1.55, 1.72, 1.76, 1.78, 1.112, 1.131, 1.132, 1.137, 1.138, 1.193, 1.311 through 1.313, 1.366, Part 5, and Part 10.

Hiram Bernstein ((703) 305–8713): §§ 1.9, 1.22, 1.26 through 1.28, 1.41, 1.48, 1.56, 1.85(c), 1.97, 1.98, 1.105, 1.111, 1.115, 1.133, 1.136, 1.322 through 1.324, and Part 3.

Robert Clarke ((703) 305–9177): Processing and petition fees, and § 1.52(b)(2).

James Engel ((703) 308–5106): §§ 1.152 *et seq.*

Eugenia Jones ((703) 306–5586): §§ 1.9, 1.27, and 1.28.

Jay Lucas ((703) 308–6868) or Anton Fetting ((703) 305–8449): §§ 1.96, and 1.821 *et seq.*

Joe Narcavage ((703) 305–1795): §§ 1.52(b)(6), 1.121, 1.125, and 1.173 *et seq.*

Kenneth Schor ((703) 308–6710): §§ 1.97, 1.98, 1.173 *et seq.*, 1.510 *et seq.*, and Part 3.

Fred Silverberg ((703) 305–8986): § 1.63 (oath or declaration) form.

Karin Tyson ((703) 306–3159): §§ 1.14, 1.33, 1.44, 1.47, 1.51, 1.52 (except (b)(2) and (b)(6)), 1.59, 1.63, 1.64, 1.67, 1.77, 1.84, 1.85 (except (c)), 1.163, and 1.720 *et seq.*

SUPPLEMENTARY INFORMATION: The organizations reporting to the Commissioner for Patents have established five business goals (Patent Business Goals) to meet the Office's Year 2000 commitments. The Patent Business Goals have been adopted as part of the Fiscal Year 1999 Corporate Plan Submission to the President. The five Patent Business Goals are:

Goal 1: Reduce Office processing time (cycle time) to twelve months or less for all inventions.

Goal 2: Establish fully-supported and integrated Industry Sectors.

Goal 3: Receive applications and publish patents electronically.

Goal 4: Exceed our customers' quality expectations, through the competencies and empowerment of our employees.

Goal 5: Align fees commensurate with resource utilization and customer efficiency.

This final rule makes changes to the regulations to support the Patent Business Goals. A properly reengineered or reinvented system eliminates the redundant or unnecessary steps that slow down processing and frustrate customers. In furtherance of the Patent Business Goals, these changes to the rules of practice take a fresh view of the business end of issuing patents, and continue a process of simplification. Formal requirements of rules that are no longer useful are eliminated. Once the intent of an applicant is understood, the Office will simply go forward with the processing. The essentials are maintained, while formalities are greatly reduced. The object is to focus on the substance of examination and decrease the time that an application for patent is sidelined with unnecessary procedural issues.

In streamlining this process, the Office will be able to issue a patent in a shorter time by eliminating formal requirements that must be performed by the applicant, his or her representatives and the Office itself. Applicants will benefit from a reduced overall cost to them for receiving patent protection and from a faster receipt of their patents.

The Office initially published an advance notice of proposed rulemaking containing twenty-one initiatives. *See Changes to Implement the Patent Business Goals*, Advance Notice of Proposed Rulemaking, 63 FR 53497 (October 5, 1998), 1215 *Off. Gaz. Pat. Office* (October 27, 1998) (Advance Notice). The Office published a notice of proposed rulemaking, proposing a number of changes to the rules of practice to implement the Patent Business Goals that contained about half of the topics set forth in the advance notice plus additional items. *See Changes to Implement the Patent Business Goals*, Notice of Proposed Rulemaking, 64 FR 53771 (October 4, 1999), 1228 *Off. Gaz. Pat. Office* 15 (November 2, 1999). This final rule contains a number of changes to the text of the rules as proposed for comment. The significant changes (as opposed to additional grammatical corrections) are discussed below. Familiarity with the Advance Notice and Notice of Proposed Rulemaking is assumed.

The title ''Commissioner of Patents and Trademarks'' was changed to ''Director of the United States Patent and Trademark Office'' by § 4732 of the ''American Inventors Protection Act of 1999'' (Title IV of the ''Intellectual Property and Communications Omnibus Reform Act of 1999'') that was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). To avoid inconsistent use of the title ''Commissioner'' and ''Director'' in the rules of practice, the Office plans to change the title ''Commissioner'' wherever it appears in the rules of practice to ''Director'' in a separate rule change.

Discussion of Specific Rules and Response to Comments

The Office received forty-eight written comments (from Intellectual Property Organizations, Law Firms, Businesses, Patent Practitioners, and others) in response to the Notice of Proposed Rulemaking. The written comments have been analyzed. For contextual purposes, the comment on a specific rule and response to the comment are provided with the discussion of the specific rule. Comments in support of proposed rule changes generally have not been reported in the responses to comments sections.

Two general comments were received that the Office should conduct a public hearing for every major rulemaking, and that in a proposed notice of rulemaking the Office should use markings to indicate the proposed changes in the rules.

Response: The suggestions are not adopted. The Office determined that a public hearing was not warranted for this rulemaking. Further, while markings to indicate the proposed changes might be helpful, on balance, the additional delay in preparing the rulemaking with markings outweighed the helpfulness of providing the markings.

Title 37 of the Code of Federal Regulations, Parts 1, 3, 5, and 10, are amended as follows:

Part 1

Section 1.4: Section 1.4(b) is amended to refer to a patent or trademark application, patent file, trademark registration file, or other proceeding, rather than only an application file. Section 1.4(b) is also amended to provide that the filing of duplicate copies of correspondence in a patent or trademark application, patent file, trademark registration file, or other proceeding should be avoided (except in situations in which the Office requires the filing of duplicate copies), and that the Office may dispose of duplicate copies of correspondence in a patent or trademark application, patent file, trademark registration file, or other proceeding. Finally, §§ 1.4(b) and 1.4(c) are also amended to change ''should'' to ''must'' because the Office needs separate copies of papers directed to two or more files, or of papers dealing with different subjects.

The explicit ability under § 1.4 to dispose of duplicate correspondence papers will be effective retroactively to any present duplicate correspondence.

Section 1.6: Section 1.6(d)(9) is amended to delete the reference to recorded answers under § 1.684(c), as § 1.684(c) has been removed and reserved.

Section 1.9: Sections 1.9(c) through (f) relating to small entities are removed and reserved with that subject matter transferred to amended § 1.27(a).

For additional changes to small entity requirements see §§ 1.27 and 1.28.

Section 1.9(i) is added to define ''national security classified'' as used in 37 CFR Chapter 1 as meaning ''specifically authorized under criteria established by an Act of Congress or Executive order to be kept secret in the interest of national defense or foreign policy and, in fact, properly classified pursuant to such Act of Congress or Executive order.''

Comment 1: One comment requested that the definitions in § 1.9(f) pertaining to small entity status be moved to the small entity provisions found in § 1.27 to provide a more cohesive policy statement, and to provide a consolidated location, which would be helpful to small entities.

Response: The comment has been adopted. Other comments related to § 1.9(f) are treated in the context of § 1.27(a) to which the subject matter has been transferred.

Comment 2: The remaining comments confirmed the Office's analysis that the proposed changes would be beneficial.

Section 1.12: Section 1.12(c)(1) is amended to change the reference to the fee set forth in ''§ 1.17(i)'' to the fee set forth in ''§ 1.17(h).'' This change is for consistency with the changes to §§ 1.17(h) and 1.17(i). See discussion of changes to §§ 1.17(h) and 1.17(i).

Section 1.14: Section 1.14 was proposed to be amended to eliminate the provisions making continuity data of an application identified in a patent available because such liberal public access to patent application information was inconsistent with patent applications being generally maintained in confidence. Since patent applications that are also filed abroad are subject to the eighteen-month publication provisions of the ''American Inventors Protection Act of 1999'' (Subtitle E—Domestic Publication of Patent Applications Published Abroad), any application that claims priority to a U.S. patent is likely to be published. Accordingly, continuity data for applications that rely upon the filing date of a U.S. patent should continue to be released and the provision for doing so is retained in § 1.14(b)(4).

Section 1.14 has been reformatted and amended to make it easier to understand.

Section 1.14(a) is amended to define ''status information'' and ''access.'' ''Status information'' is defined as information that the application is pending, abandoned, or patented, as well as the application's numeric identifier. An application's numeric identifier is (1) the eight digit application number, or (2) the six digit serial number and the filing date, or the date of entry into the national stage. ''Access'' is defined as providing the application file for review and copying of any material in the file.

Section 1.14(b) is amended to state when status information may be supplied, retaining the reasons set forth in prior § 1.14(a)(1)(i). Section 1.14(b)(3) is simplified so as to indicate that status information will be given for international applications in which the United States is designated, even if that application has not yet entered the national stage. If, however, an international application has not yet been assigned a U.S. application number, no such application number can be provided by the Office. The material in former § 1.14(b) (timing of destruction) was proposed to be revised and was set forth as proposed § 1.14(f), but the material has been deleted instead. The timing of any destruction of patent files and papers is governed by 44 U.S.C. 33 and 36 CFR 12, which require that records be retained in accordance with the agency records schedules approved by the National Archives and Records Administration (NARA) or the General Records Schedule issued by NARA. The law also requires that the Office generate a list of records and the dispositions of those records, and the Comprehensive Records Schedule is such a list. According to this schedule, an abandoned national patent application filed before June 8, 1995, will be destroyed after twenty years from the date of abandonment unless it is referenced in a U.S. patent. Furthermore, the schedule provides that national applications filed on or after June 8, 1995, will be destroyed twenty-three years after the date of abandonment unless referenced in a U.S. patent. In addition, the records schedule provides that International application (home and search copy) files are destroyed 20 years after their filing or deposit date. Since former § 1.14(b) could not change any records retention schedule, it was decided to delete former § 1.14(b) (proposed as § 1.14(f)) and to redesignate proposed §§ 1.14(g) through (k) as (f) through (j). For additional information about the Office's Comprehensive Records Schedule or the Office's records management program in general, the Office's Records Officer should be

contacted by telephone at (703) 308–7400, or by facsimile at (703) 308–7407.

Section 1.14(c) is amended to state that a copy of an application-as-filed may be obtained, upon payment of the appropriate fee, when a U.S. patent incorporates the application by reference.

Section 1.14(d) is amended to correspond to prior § 1.14(a)(3)(iii) with additional text from prior § 1.14(e)(2). Section 1.14(d) is revised to state that an applicant, an attorney or agent of record, or an applicant's assignee may authorize access to an application by filing a power to inspect. In addition, § 1.14(d) provides that if an executed oath or declaration has not been filed, a registered attorney or agent named in the papers filed with the application may have access, or authorize another person to have access, to an application by filing a power to inspect. A registered practitioner named in a letterhead would not be sufficient, but rather a clear identification of the individual as being a representative would be required. The form for a power to inspect is PTO/SB/67.

Section 1.14(e) is amended to correspond to prior § 1.14(a)(3) and states that any person may obtain access to an application by submitting a request for access if certain conditions apply. The form for a request for access to an abandoned application is PTO/SB/68. Access to international phase application files is governed by the provisions of the PCT and not by § 1.14. Section 1.14(e)(1), as amended, corresponds to prior § 1.14(a)(3)(ii). Section 1.14(e)(2)(i) corresponds to prior § 1.14(a)(3)(iv)(A). Section 1.14(e)(2)(ii), as revised, corresponds to prior § 1.14(a)(3)(iv)(B). Section 1.14(e) does not include the provisions of prior § 1.14(a)(3)(iv)(C). This will now enable an abandoned application that claims benefit of the filing date of an application that is open to public inspection to be maintained in confidence unless the abandoned application is open to public inspection for some other reason.

Sections 1.14(f), (g), (h), and (i) contain the material of prior §§ 1.14(c), (d), (f), and (g), respectively.

Section 1.14(j) is added to contain the material of prior § 1.14(e) and amendment is made to explain the requirements of a petition for access and include the provisions of former § 1.14(e)(1). Section 1.14(j) is also revised to indicate that the Office, either sua sponte or on petition, may provide access or copies of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. The Office may, for example, provide access to, or copies of, applications to another Federal Government agency, such as a law enforcement agency, whether the Office is acting on its own initiative or in response to a petition from the other agency when access is needed for a criminal investigation.

Comment 3: Two comments urged the Office to continue to provide status information on applications that claim the benefit of the filing date of an application for which status information is available. The information was said to be very useful to the public and to provide some measure of certainty as to whether any continuing applications have been filed.

Response: The comments are adopted. The Office will continue to release continuity data for all applications for which status information may be given.

Comment 4: Several comments supported proposed § 1.14, but addressed proposed § 1.14(d)(4), arguing that the filing of a power of attorney, not an executed oath or declaration, should control whether the registered attorney or agent named in the application papers under § 1.53 or the national stage documents under § 1.494 or § 1.495 can sign a power to inspect. The comments noted that the power of attorney need not be filed with the oath or declaration, and that the attorney who filed the application should be able to sign a power to inspect until a power of attorney is filed wherein he is not named as an attorney.

Response: The suggestion is not adopted. Once an executed oath or declaration is filed, the omission of a power of attorney may be intentional on the part of the applicant and the attorney who filed the application should not continue to be allowed to sign a power to inspect. Provision has been made for the attorney who filed the application to sign a power to inspect because an application without an executed oath or declaration would not otherwise have anyone entitled to inspect the application. Inventorship is not set until an executed oath or declaration is filed (see § 1.41(a)(1)). An attorney or agent is not of record until an executed oath or declaration and a power of attorney are filed (see § 1.34(b)). An assignee is not permitted to take action until an executed oath or declaration and an assignment are filed (see § 3.73(b)). Accordingly, without an executed oath or declaration, an executed power of attorney would be insufficient to make an attorney of record. Furthermore, once an executed oath or declaration is filed, any one of the named inventors may execute a power of attorney and it is no longer necessary to have the attorney or agent who filed the application be permitted to execute a power to inspect.

Comment 5: Two comments suggested allowing public inspection of all applications relied upon for priority without a petition for access, and not just those that are abandoned.

Response: Applications are normally maintained in confidence pursuant to 35 U.S.C. 122 and public access to any application relied upon for priority in a U.S. Patent is not appropriate. An application that issues as a patent may be a divisional application of a pending application and the prosecution of the parent application may have little, if any, subject matter in common with the patent. Accordingly, if a petition for access is filed, only that part of the prosecution history and application that relates to the subject matter claimed in the patent is released to petitioner.

Comment 6: One comment suggested that the term ''special circumstances'' be defined in the rule.

Response: The suggestion is not adopted. How the Office defines the term ''special circumstances'' as used in 35 U.S.C. 122 and § 1.14(j) is addressed in the Manual of Patent Examining Procedure (MPEP)(February 2000) in § 103 under the subsection titled ''Petition for Access,'' and whether ''special circumstances'' are present depends upon the particular facts involved, which facts may be varied.

Section 1.17: Sections 1.17(h) and 1.17(i) are amended to restate the introductory reference to the sections referring to §§ 1.17(h) and (i). Sections 1.17(h) and (i) are also amended to characterize the fee set forth in § 1.17(h) as a petition fee, and the fee set forth in § 1.17(i) as a processing fee. Section 1.17(h) is amended to list only those matters that require the exercise of judgment or discretion in determining whether the request/petition will be granted or denied (*e.g.*, 1.47, 1.53, 1.182, 1.183, 1.313). Section 1.17(i) is amended to list those matters that do not require the exercise of judgment or discretion, but which are routinely granted once the applicant has complied with the stated requirements (*e.g.*, 1.41, 1.48, 1.55). Thus, the Office is amending § 1.17(h) and § 1.17(i) to locate matters requiring a petition in § 1.17(h), and those matters that do not require a petition, but only a processing fee, in § 1.17(i). Section 1.17(i) is also amended to provide a processing fee for: (1) Filing a nonprovisional application in a language other than English (§ 1.52(d)), previously in § 1.17(k); and (2) filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity

set forth in the international stage (§ 1.497(d)).

Section 1.17(k) provides a fee for filing a request for expedited examination under § 1.155(a).

Sections 1.17(l) and (m) are amended for clarity, to eliminate unassociated text, and to reflect fiscal year 2001 fee amounts.

Section 1.17(p) is amended to include a reference to § 1.97(d) as well as to § 1.97(c) in view of the amendment to § 1.97(d) referencing § 1.17(p) rather than § 1.17(i). The fee set forth in § 1.17(p) is also changed from $240 to $180.

Section 1.17(q) is amended for consistency with §§ 1.17(h) and 1.17(i), as the matters listed therein apply to provisional applications.

Comment 7: Comments were received opposing the change to § 1.17(p).

Response: See the discussion thereof in § 1.97(d).

Section 1.19: Section 1.19(a) is amended to clarify that the fees set forth in § 1.19(a)(1) do not apply to patents containing a color photograph or drawing, that the fee in § 1.19(a)(2) applies to plant patents in color, and that the fee in § 1.19(a)(3) applies to patents (other than plant patents) containing a color drawing.

Former sections 1.19(b)(1) and (b)(2) are divided into three sections (§§ 1.19(b)(1), 1.19(b)(2), and 1.19(b)(3)), with the former provisions of §§ 1.19(b)(3) and 1.19(b)(4) being redesignated as §§ 1.19(b)(4) and 1.19(b)(5). Section 1.19(b)(1) refers to the application as filed. Section 1.19(b)(2) is limited to charges for the paper portion of the complete patent application file wrapper, namely: $200 for copies of the first 400 pages of a patent application file wrapper and contents and $40 for each additional one hundred pages, or fraction thereof. Section 1.19(b)(3) provides for a charge of $55 for a copy of a compact disc in a patent application file wrapper, and $15 for each additional compact disc when it is part of the same order. The submission of application information on compact disc is now provided for in §§ 1.52(e), 1.96 and 1.821 *et seq.*

Section 1.19(g) is removed and reserved. The practice of comparing and certifying documents not produced by the Office is being eliminated. The Office considers it appropriate to certify copies of documents only when the copy of the document has been prepared by the Office.

Section 1.19(h) is also removed and reserved. The $25 fee under § 1.19(h) for obtaining a corrected or duplicate filing receipt is no longer necessary as the Office is now performing that service without charge. Consequently, where there is an error in a filing receipt, applicants need no longer provide a showing that the error was due to Office mistake or pay a $25 fee for the corrected receipt. *See Changes In Practice In Supplying Certified Copies And Filing Receipts*, 1199 *Off. Gaz. Pat. Office* 38 (June 10, 1997).

Comment 8: One comment stated that the proposed fee of $250 for copies of certified and uncertified patent-related file wrappers and contents of 400 or fewer pages was excessive, and that $100 for the first 400 pages would be more reasonable, if it costs 25 cents a page for copying. In addition, the comment stated that there should be no reason why a flat page charge cannot be used; that with the proposed rule, the number of pages would have to be counted to see whether the initial 400-page limit has been reached, and that it should not be a burden to determine the number of pages that have been copied.

Response: The comment is adopted to the extent that the cost for the first 400 pages has been reduced to $200. Much of the cost per page for copying a given application depends upon the difficulty in obtaining the application, the time required putting the papers in condition for copying and returning those same papers to the file in their original condition, and the number of pages being fed instead of copied as a single sheet. A fee of $200 has been determined to be the appropriate price for locating, preparing, copying and mailing the average application. As to charging based upon the number of pages, this suggestion has been carefully considered but has not been adopted. In order to improve efficiency, the Office needs to have a procedure which will generally require the least communications between the requester and the Office. If a flat $200 fee is charged for file wrappers with fewer than 400 pages, then most requesters of file wrappers can pay the set fee and receive their order without any additional communication with the Office. When the file wrapper is larger than 400 pages, then the Office either will have to receive a deposit account authorization for any fees due which can be debited or request the additional money from the requester. Since many requesters do not have deposit accounts and others will be reluctant to allow any charge to be made to their deposit account or credit card, having a system where the Office charges a set fee for most orders and possibly contacting the requester to obtain additional fees when the order is very large will assist requesters in minimizing the risk of unexpectedly large charges.

Section 1.22: Section 1.22(b) is amended to change ''should'' to ''must'' because the Office needs fees to be submitted in such a manner that it is clear for which purpose the fees are paid. Section 1.22(b) is also amended to provide that the Office may return fees that are not itemized as required by § 1.22(b), and that the provisions of § 1.5(a) do not apply to the resubmission of fees returned pursuant to § 1.22.

Section 1.22 was proposed to be amended to add §§ 1.22(c)(1) and (2) to define by rule when a fee had been paid, such as when payment is made by authorization to charge a deposit account, or by submission of a check. An effect of the rule change would have been to change the treatment for refund purposes of payments made by authorization to charge a deposit account. The proposed amendment will not be made as amendment is unnecessary in view of payment receipt dates already being governed by other rules (*e.g.*, §§ 1.6, 1.8 and 1.10). Notwithstanding the lack of amendment to § 1.22, the Office is changing in one aspect its treatment of authorizations to charge deposit accounts for refund purposes, which aspect is not explicitly governed by other rules. The Office will no longer treat authorizations to charge a deposit account as being received by the Office as of the date that the deposit account is actually debited for purposes of refund payments under §§ 1.26 and 1.28. As of the effective date of this final rule, payment by authorization to charge a deposit account will be treated for refund purposes the same as payments by other means (*e.g.*, check or credit card charge authorization), with each being treated as paid (for refund purposes) on the date of receipt in the Office as defined by § 1.6 (Example 1). The advantage of using a certificate of mailing under § 1.8 for timely reply to an Office action, while using the date of receipt by the Office (§ 1.6) of the payment for refund purposes, will be retained (Example 2). The MPEP will be revised to contain the substance of the formerly proposed amendment to § 1.22(c).

Example 1: Payment of a large entity basic filing fee by authorization to charge a deposit account is hand-carried to the Office on October 2, 2000. The deposit account is debited by the Office on February 2, 2001. A request for refund of a portion of the filing fee, based on a request for small entity status, is hand-carried to the Office on March 30, 2001. Under prior practice, the request for refund would be granted as timely submitted within two months of debiting of the deposit account. Under the new practice, the request for refund would be denied as untimely made. Applicant would, however, under the amended rule, have three months (rather

than two) from the October 2, 2000 payment date to submit the refund request.

Example 2: A Notice to File Missing Parts of Application was mailed on November 10, 2000, requiring a large entity basic filing fee with the standard period for reply of two months. A check for payment of the large entity basic filing fee is mailed with a § 1.8 certificate of mailing date of January 10, 2001, and is actually received in the Office on January 15, 2001. Under prior and current practice, the January 10, 2001 reply to the November 10, 2000 Notice to File Missing Parts of Application, which was received in the Office on January 15, 2001, is a timely reply without the need for an extension of time under § 1.136(a), and the (new) three-month period for submission of a request for refund based on small entity status under amended § 1.28(a) would expire on April 16, 2001 (April 15, 2001 being a Sunday). For a fee payment made by authorization to charge a deposit account, the payment is also timely and results in the same expiration for the refund period. For express mail fee payments under § 1.10, the express mail date is the receipt date for the payment and calculating the three month refund period and not the actual date of receipt of the payment in the Office.

Comment 9: One comment requested that explicit guidance be provided in the MPEP as to what would constitute a sufficiently clear statement of the purpose for which fees are being paid under § 1.22(b). In particular, the example was raised as to whether a statement that ''filing fees were being paid'' would be sufficient if the fees being paid included both a basic filing fee and an additional independent claim fee.

Response: The comment is adopted. The MPEP will be revised to provide examples that will clarify what constitutes a sufficiently clear statement. The intent of the amendment is to encourage a better explanation by applicants so that Office employees can properly account for the payments being made by applicants and not to find ways to hold a statement deficient. Specifically, the reference to filing fees would be sufficient to cover filing fees of all different types of applications and all types of claims fees.

Comment 10: One comment opposed the addition of § 1.22(c), as the addition was confusing, particularly in regard to §§ 1.8 and 1.10 payments, and the addition was not necessary to support the proposed amendment to § 1.26(b) for a two-year period for refunds from a date certain.

Response: The comment is adopted and the proposed addition of § 1.22(c) will not be made. The amendment is not in fact necessary to define when a fee has been paid, in view of the change in practice regarding treatment of deposit account practices, supra, §§ 1.8, or § 1.10, and the actual date of receipt (in the absence of §§ 1.8 or 1.10 being utilized). The MPEP will be modified to better clarify date of payments, particularly as refund time periods are impacted.

Section 1.25: Section 1.25(b) is amended to provide that an authorization to charge fees under § 1.16 (which relates to national application filing fees) in an application filed under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492 (which relates to national stage fees). There are many instances in which papers filed for the purpose of entering the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495 include an authorization to charge fees under § 1.16 (rather than fees under § 1.492) which relates to national applications under 35 U.S.C. 111. In such instances, the Office treats the authorization as an authorization to charge fees under § 1.492 since: (1) timely payment of the appropriate national fee under § 1.492 is necessary to avoid abandonment of the application as to the United States; and (2) the basic filing fee under § 1.16 is not applicable to such papers or applications. Therefore, the Office is changing § 1.25(b) to place persons filing papers to enter the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495 on notice as to how an authorization to charge fees under § 1.16 will be treated.

Section 1.25(b) is also amended to provide that an authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b), and to bring together the two sentences relating to sufficient funds.

Comment 11: See comment for § 1.311.

Section 1.26: The Office is amending the rules of practice to provide that all requests for refund must be filed within specified time periods. The rules of practice do not (other than in the situation in which a request for refund is based upon subsequent entitlement to small entity status) set any time period (other than ''a reasonable time'') within which a request for refund must be filed. In the absence of such a time period, Office fee record keeping systems and business planning must account for the possibility that a request for refund may be filed at any time, including many years after payment of the fee at issue.

The new two year limit for requesting refunds under § 1.26 will be applied to any fee paid regardless of when it was paid. The two year time period for requesting a refund will end two years and sixty days from the date of publication in the **Federal Register** for fees paid prior to sixty days from the date of publication in the **Federal Register**, or two years from payment of the fee for fees paid on or after sixty days from the date of publication in the **Federal Register**.

It is a severe burden on the Office to treat a request for refund filed years after payment of the fee at issue. Since Office fee record keeping systems change over time, the Office must check any system on which fees for the application, patent, or trademark registration have been posted to determine what fees were in fact paid. In addition, changes in fee amounts, which usually occur on October 1 of each year, make it difficult to determine with certainty whether a fee paid years ago was the correct fee at the time and under the condition it was paid.

Accounting for the possibility that a request for refund may be filed years after payment of the fee at issue causes business planning problems. Without any set time period within which a request for refund must be filed, the Office must maintain fee records, in any automated fee record keeping system ever used by the Office, in perpetuity. Finally, as the Office can never be absolutely certain that a submitted fee was not paid by mistake or in excess of that required, the absence of such a time period subjects the Office to unending and uncertain financial obligations.

Accordingly, the Office is amending § 1.26 to provide non-extendable time periods within which any request for refund must be filed to be timely.

Section 1.26(a) is amended by dividing its first sentence into two sentences. Section 1.26(a) is further amended for consistency with 35 U.S.C. 42(d) (the Office ''may refund any fee paid by mistake or any amount paid in excess of that required''). Under 35 U.S.C. 42(d), the Office may refund: (1) A fee paid when no fee is required (a fee paid by mistake); or (2) any fee paid in excess of the amount of fee that is required. *See Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the ''by mistake'' clause is applicable only to a mistake relating to the fee payment). In the situation in which an applicant or patentee takes an action ''by mistake'' (*e.g.*, files an application or maintains a patent in force ''by mistake''), the submission of fees required to take that action (*e.g.*, a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a ''fee paid by mistake'' within the meaning of 35 U.S.C. 42(d). Section 1.26(a) is also amended to revise the ''change of purpose'' provisions to read ''[a] change of purpose after the payment of a fee, as

when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.''

Section 1.26(a) is also amended to change the sentence ''[a]mounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payor be notified of such amount; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account'' to ''[t]he Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts.'' Except as discussed below, the Office intends to continue to review submitted fees to determine that they have not been paid by mistake or in excess of that required, and to *sua sponte* refund fees (of amounts over twenty-five dollars) determined to have been paid by mistake or in excess of that required. Section 1.26(a), however, is amended to eliminate language that appears to obligate the Office to *sua sponte* refund fees to be consistent with the provisions of § 1.26(b) which requires that any request for refund be filed within a specified time period.

Section 1.26(a) is also amended to facilitate refunds by electronic funds transfer. Section 31001(x) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, 110 Stat. 1321 (1996) (the Debt Collection Improvement Act of 1996), amended 31 U.S.C. 3332 to require that all disbursements by Federal agencies (subject to certain exceptions and waivers) be made by electronic funds transfer. The Department of the Treasury has implemented this legislation at 31 CFR part 208. *See Management of Federal Agency Disbursements*, Final Rule Notice, 63 FR 51489 (September 25, 1998). Thus, § 1.26(a) is amended to enable the Office to: Obtain the banking information necessary for making refunds by electronic funds transfer in accordance with 31 U.S.C. 3332 and 31 CFR part 208, or obtain the deposit account information to make the refund to the deposit account, or to have the option of refunding by treasury check.

Specifically, § 1.26(a) is also amended such that if a party paying a fee or requesting a refund does not instruct that refunds be credited to a deposit account, the Office will attempt to make the refund by electronic funds transfer. If such party does not provide the banking information necessary for making refunds by electronic funds transfer, or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may either require such banking information or use the banking information on the payment instrument to make a refund. This provision will authorize the Office to: (1) Use the banking information on the payment instrument (*e.g.*, a personal check is submitted to pay the fee) when making a refund due to an excess payment; or (2) require such banking information including the existence of a deposit account in other situations (*e.g.*, a refund is requested or a money order or certified bank check is submitted containing an excess payment). The purpose of this change to § 1.26(a) is to encourage parties to submit the banking information necessary for making refunds by electronic funds transfer (if not on the payment instrument) up-front, and not to add a step (requiring such banking information) to the refund process. If it is not cost-effective to require the banking information necessary for making refunds by electronic funds transfer, the Office may either: Obtain the deposit account information, or simply issue any refund by treasury check. *See* 31 CFR 208.4(f).

Section 1.26(a) also provides that any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. The Office will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account (§ 1.25).

Section 1.26(b) provides that any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in § 1.26(b) or in § 1.28(a).

Section 1.26(b) also provides that if the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and that such request must be accompanied by a copy of that deposit account statement. This provision of § 1.26(b) will apply, for example, in the following types of situations: (1) A deposit account is charged for an extension of time as a result of there being a prior general authorization in the application (§ 1.136(a)(3)); or (2) a deposit account is charged for the outstanding balance of a fee as a result of an insufficient fee being submitted with an authorization to charge the deposit account for any additional fees that are due. In these situations, the party providing the authorization is not in a position to know the exact amount by which the deposit account will be charged until the date of the deposit account statement indicating the amount of the charge.

Finally, § 1.26(b) provides that the time periods set forth in § 1.26(b) are not extendable.

Section 1.27: The Office is simplifying applicant's request for small entity status under § 1.27. The currently used small entity statement forms are eliminated as they are no longer needed. Some material in §§ 1.9 and 1.28 is reorganized into § 1.27.

The new standard for asserting a claim for small entity status under § 1.27 will be effective on the date of publication in the **Federal Register**.

Small entity status is established at any time by a simple assertion of entitlement to small entity status. The previously required statements, which include a formalistic reference to § 1.9, are no longer required. Payment of an exact small entity basic filing (§§ 1.16(a), (f), (g), (h), or (k)) or national stage (§§ 1.492(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5)) fee is also considered an assertion of small entity status. This is so even if the wrong exact basic filing or national fee was selected. To establish small entity status after payment of the basic filing or national stage fee as a non-small entity, a written assertion of small entity status is required to be submitted.

The parties who can assert small entity status have been expanded/liberalized to include one of several inventors (rather than all the inventors), a partial assignee (rather than all the assignees), or any attorney or agent identified in § 1.33. Written assertion of small entity status and the filing of a written assertion are not necessarily performed by the same party. *Compare* § 1.27(c)(2)(ii) with § 1.27(c)(2)(iii).

Other clarifying changes are made including a transfer of material into § 1.27 from § 1.9 drawn towards definitions of a small entity and from § 1.28 drawn towards: (1) Assertions in related, continuing and reissue applications; (2) notification of loss of entitlement to small entity status; and (3) fraud on the Office in regard to establishing small entity status or paying small entity fees.

While there is no change in the current requirement to make an investigation in order to determine entitlement to small entity status, a recitation is added noting the need for a determination of entitlement prior to an assertion of status; the Office is only changing the ease with which small entity status could be claimed once it

has been determined that a claim to such status is appropriate.

For additional changes to small entity requirements see § 1.28.

Problem and Background: Section 1.27 formerly required that a request for small entity status be accompanied by submission of an appropriate statement that the party seeking small entity status qualified in accordance with former § 1.9. Either a reference to former § 1.9 or a specific statement relating to the former provisions of § 1.9 was mandatory. For a small business concern, the small business concern had to either state that exclusive rights remain with the small business concern, or if not, had to identify the party to which some rights had been transferred so that the party to which rights have been transferred could submit its own small entity statement (former § 1.27(c)(1)(iii)). This led to the submission of multiple small entity statements for each request for small entity status where rights in the invention were split. In part, to ensure that at least the reference to § 1.9 was complied with, the Office produced four types of small entity statement forms (for inventors, small business concerns, non-profit organizations, and non-inventor supporting a claim by another) that included the required reference to § 1.9 and specific statements as to exclusive rights in the invention. Where an application had not been assigned and there were multiple inventors, each inventor had to actually sign a small entity statement, the execution of which must have all been coordinated and submitted concurrently. Similarly, coordination of execution and submission of statements were needed where there was more than one assignee. Additionally, the statement forms relating to small business concerns and non-profit organizations had to be signed by an appropriate official empowered to act on behalf of the small business concern or non-profit organizations. Refunds of non-small entity fees could only be obtained if a refund was specifically requested within two months of the payment of the full (non-small entity) fee and was supported by all required small entity statements. See former § 1.28(a)(1). The former two-month refund window under § 1.28 was not extendable.

The rigid requirements of §§ 1.27 and 1.28 led to a substantial number of problems. Applicants, particularly *pro se* applicants, did not always recognize that a particular reference to former § 1.9 was required in their request to establish small entity status. They believed that all they had to do was pay the small entity fee and state that they were a small entity. Further, the time required to ascertain who were the appropriate officials to sign the statement and to have the statements (referring to former § 1.9) signed and collected (where more than one was necessary), resulted, in many instances, in small entities having to pay the higher non-small entity fees and then seek a refund. These situations resulted in: (1) Small entity applicants also having to pay additional fees (*e.g.*, surcharges and extension(s) of time fees for the delayed submission of the small entity statement form); (2) additional correspondence with the Office to perfect a claim for small entity status; and (3) the filing of petitions with petition fees to revive abandoned applications. This increased the pendency of the prosecution of the application in the Office and, in some cases, resulted in the loss of patent term. For example, under former procedures, if a *pro se* applicant filed a new application with small entity fees but without a small entity statement, the Office mailed a notice to the *pro se* applicant requiring the full basic filing fee of a non-small entity. Even if the applicant timely filed a small entity statement, the applicant needed to timely pay the small entity surcharge for the delayed submission of the small entity statement to avoid abandonment of the application. A second example was a non-profit organization paying the basic filing fee as a non-small entity because of difficulty in obtaining the non-profit small entity statement form signed by an appropriate official. In this situation, a refund pursuant to § 1.26, based on establishing status as a small entity, could only be obtained if a statement under § 1.27 and the request for a refund of the excess amount were filed within the non-extendable two-month period from the date of the timely payment of the full fee. A third example was an application filed without the basic filing fee on behalf of a small business concern by a practitioner who included the standard authorization to pay additional fees. The Office would have immediately charged the non-small entity basic filing fee without specific notification thereof at the time of the charge. By the time the deposit account statement was received and reviewed, the two-month period for refund could have expired.

Accordingly, a simpler procedure to establish small entity status will reduce processing time within the Office and will be a tremendous benefit to small entity applicants as it will eliminate the time-consuming and aggravating processing requirements that were mandated by the former rules. Thus, the instant simplification will help small entity applicants to receive patents sooner with fewer expenditures in fees and resources and the Office can issue the patent with fewer resources.

Assertion as to entitlement to small entity status; assertion by writing: The Office will now allow small entity status to be established by the submission of a simple written assertion of entitlement to small entity status. The former formal requirements of § 1.27, which included a reference to either former § 1.9, or to the exclusive rights in the invention, are eliminated.

The written assertion is not required to be presented in any particular form. Written assertions of small entity status or references to small entity fees will be liberally interpreted to represent the required assertion. The written assertion can be made in any paper filed in or with the application and need be no more than a simple sentence or a box checked on an application transmittal letter or reply cover sheet. It is the intent of the Office to modify its application transmittal forms to provide for such a check box. Accordingly, small entity status can be established without submission of any of the former small entity statement forms (PTO/SB/09–12) that embody and comply with the former requirements of § 1.27 and which were previously used to establish small entity status. Practitioners may, of course, continue to use such forms or similar forms if they believe small entity forms serve an educational purpose for their clients.

Assertion by Payment of Small Entity Basic Filing or Basic National Fee: The payment of an exact small entity basic filing (§§ 1.16(a), (f), (g), (h), or (k)) or basic national fee (§§ 1.492(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5)) is also considered to be a sufficient assertion of entitlement to small entity status. An applicant filing a patent application and paying an exact small entity basic filing or basic national fee automatically establishes small entity status for the application even without any further written assertion of small entity status. This is so even if an applicant inadvertently selects the wrong type of small entity basic filing or basic national fee for the application being filed. If small entity status was not established when the basic filing or basic national fee was paid, such as by payment of a large entity basic filing or basic national fee, a later claim to small entity status requires an (actual) written assertion. Payment of a small entity fee other than a small entity basic filing or basic national fee (*e.g.*, extension of time, or

issue fee) without inclusion of a written assertion is not sufficient.

Even though applicants can assert small entity status only by payment of an exact small entity basic filing or basic national fee, the Office encourages applicants to also file a written assertion of small entity status as well as pay the exact amount of the small entity basic filing or basic national fee. To that end, the Office intends to amend the application transmittal forms (PTO/SB/05, PTO/SB/18, PTO/SB/19) to include a check box that can be used as a written assertion of small entity status. A written assertion will provide small entity status should applicant fail to pay the exact small entity basic filing or basic national fee. The limited provision providing for small entity status by payment of an exact small entity basic filing or basic national fee is only intended to act as a safety net to avoid possible financial loss to inventors or small businesses that qualify for small entity status. As noted in the discussion relating to § 1.33(a), one may not wish to solely rely upon use of a written assertion and pay the exact amount of the basic filing or basic national fee, particularly for assignees and submissions by one of the inventors, after an executed oath or declaration under § 1.63 has been submitted.

Caution: Even though small entity status is accorded where the wrong type of small entity basic filing fee or basic national fee is selected but the exact amount of the fee is paid, applicant still needs to pay the correct small entity amount for the basic filing or basic national fee where selection of the wrong type of fee results in a deficiency. While an accompanying general authorization to charge any additional fees suffices to pay the balance due of the proper small entity basic filing or basic national fee, specific authorizations to charge fees under § 1.17 or extension of time fees do not suffice to pay any balance due of the proper small entity basic filing or basic national fee because they do not actually authorize payment of small entity amounts.

Examples: Applications under 35 U.S.C. 111(a): If an applicant were to file a utility application under 35 U.S.C. 111(a), yet only pay the exact small entity amount for a design application (currently the small entity filing fees for utility and design applications are $345 and $155, respectively), small entity status for the utility application would be accorded. See the following examples:

(1) Where the utility application under 35 U.S.C. 111(a) was filed inadvertently with the exact small entity basic filing fee for a design application rather than for a utility application and an authorization to charge the filing fee was not present, the Office would accord small entity status and mail a Notice to File Missing Parts of Application, requiring the $190 difference between the small entity utility application filing fee owed and the small entity design application filing fee actually paid plus a small entity surcharge (of $65) for the late submission of the correct filing fee.

(2) Where the utility application under 35 U.S.C. 111(a) was filed without any filing fee but the $155 exact small entity filing fee for a design application was inadvertently paid in reply to a Notice to File Missing Parts of Application, small entity status would be established even though the correct small entity filing fee for a utility application was not fully paid. While the Office would notify applicant of the remaining amount due, including the need for a small entity surcharge in view of the deficiency in the filing fee, the period for reply to pay the correct small entity utility basic filing fee and surcharge would, however, continue to run. Small entity extensions of time under § 1.136(a) would be needed for the later submission of the $190 difference between the $345 small entity utility basic filing fee owed and the $155 small entity design filing fee inadvertently paid as well as the small entity surcharge. If there was an authorization to charge a deposit account in the reply to the Notice, the $190 difference would have been charged along with the small entity $65 surcharge and the period for reply to the Notice to File Missing Parts of Application would not continue to run.

Applications entering the national stage under 35 U.S.C. 371: Section 1.492(a) sets forth five (5) different basic national fee amounts which apply to different situations. If an applicant pays a basic national fee which is the exact small entity amount for one of the fees set forth in § 1.492(a), but not the particular fee which applies to that application, the applicant will be considered to have made an assertion of small entity status. This is true whether the fee paid is higher or lower than the actual fee required. See the following examples.

(1) An applicant pays $485 (the small entity amount due under § 1.492(a)(3), where the United States was neither the International Searching Authority (ISA) nor the International Preliminary Examining Authority (IPEA) and the search report was not prepared by the European Patent Office (EPO) or Japanese Patent Office (JPO)) when in fact the required small entity fee is $420 under § 1.492(a)(5), because the JPO or EPO prepared the search report. The applicant will be considered to have made the assertion of small entity status. The office will apply $420 to the payment of the basic national stage fee and refund the overpayment of $65.

(2) An applicant pays $420 (the small entity fee due under § 1.492(a)(5) where the search report was prepared by the EPO or JPO). In fact, the search report was prepared by the Australian Patent Office and no preliminary examination fee was paid to the United States Patent and Trademark Office. Thus, the required small entity fee is $485 under § 1.492(a)(3). The applicant will be considered to have made the assertion of small entity status. If the applicant has authorized payment of fee deficiencies to a deposit account, the Office will charge the $65 to the deposit account and apply it and the $420 to the basic national fee. If there is no authorization or there are insufficient funds in the deposit account, the basic national fee payment is insufficient and the balance is due. If the balance is not provided before 20 or 30 months from the priority date has expired, the application will be abandoned.

If payment is attempted of the proper type of basic filing or basic national fee (applicant correctly identifies the type of fee for the type of application being filed), but the amount of the fee paid is not the exact small entity fee required (an incorrect fee amount is supplied) and a written assertion of small entity status is not present, small entity status will not be accorded. The Office will mail a notice of insufficient basic filing or basic national fee with a surcharge due as in prior practice if an authorization to charge the basic filing or basic national fee is not present. The Office does not consider a basic filing or basic national fee submitted in an amount above the correct fee amount, but below the non-small entity fee amount, as a request to establish small entity status unless an additional written assertion is also present. The submission of a basic filing or basic national fee below the correct fee amount also does not serve to establish small entity status.

Where an application is originally filed by a party, who is in fact a small entity, with an authorization to charge fees (including basic filing or national fees) and there is no indication (assertion) of entitlement to small entity status present, that authorization is not sufficient to establish small entity status unless the authorization is specifically directed to small entity basic filing or basic national fees. The general

authorization to charge fees will continue to be acted upon immediately and the full (not small entity) basic filing or basic national fees will be charged. Applicant will have three months to request a refund by asserting entitlement to small entity status. This is so even if the application is a continuing application where small entity status had been established in the prior application.

Parties who can assert entitlement to small entity status by writing: The parties who can assert entitlement to small entity status by writing includes all parties permitted by § 1.33(b) to file a paper in an application. This eliminates the additional requirement of obtaining the signature of an appropriate party other than the party prosecuting the application. By way of example, in the case of three *pro se* inventors for a particular application, the three inventors upon filing the application can submit a written assertion of entitlement to small entity status and thereby establish small entity status for the application. For small business concerns and non-profit organizations, the practitioner can supply the assertion rather than require an appropriate official of the small business concern or organization to execute a small entity statement form. In addition, a written assertion of entitlement to small entity status can be made by one of several inventors or a partial assignee. Former practice did not require an assignee asserting small entity status to submit a § 3.73(b) certification, and such certification is not now required under the current revision either for partial assignees or for an assignee of the entire right, title, and interest.

Inventors asserting small entity status: Any inventor (of record) is permitted to submit a written assertion of small entity status, including individuals identified as inventors but who are not officially named of record as an executed § 1.63 oath/declaration has not yet been submitted. See § 1.41(a)(1). Where an application is filed without an executed oath/declaration pursuant to § 1.53(f), the Office will accept the written assertion of an individual who has merely been identified as an inventor on filing of the application (*e.g.*, application transmittal letter) as opposed to having to be named as an inventor by the filing of an executed § 1.63 oath or declaration (§§ 1.41(a)(1)). Sections 1.4(d)(2) and 10.18(b) are seen as sufficient basis to permit any individual to provide a written assertion so long as the individual identifies himself or herself as an inventor. An actual inventor who has not been identified as an inventor (*e.g.*, by way of application transmittal letter) or named as an inventor (*i.e.*, executed § 1.63 oath or declaration) in the file record may not file a written assertion as to small entity entitlement.

Where a § 1.63 oath or declaration is later filed, any original written assertion as to small entity status (which has been submitted to the Office by an appropriate party under § 1.33(b)) will remain unless changed by an appropriate party under § 1.27(f)(2). Where a later-filed § 1.63 oath or declaration sets forth an inventive entity that does not include the person who initially was identified as an inventor and who asserted small entity status, small entity status will also remain.

A distinction exists, however, as to who can file a written assertion of entitlement to small entity status once the written assertion is signed. Sections 1.27(c)(2)(ii) and 1.33(b) permit one of several inventors to file as well as sign a written assertion. The same is not true for a partial assignee. Section 1.27(c)(2)(iii). While a partial assignee may sign a written assertion, the written assertion must be filed by an appropriate party under § 1.33(b).

Parties who can assert entitlement to small entity status by payment of basic filing or national fee: Where small entity status is sought by way of payment of the basic filing or basic national fee, any party, such as a partial assignee, may submit payment, such as by check, and small entity status will be accorded.

Policy Considerations: Office policy and procedures already permit establishment of small entity status in certain applications through simplified procedures. For example, small entity status previously could be established in a continuing or reissue application simply by payment of the small entity basic filing fee if the prior application/patent had small entity status. See former § 1.28(a)(2). The instant concept of payment of the small entity basic statutory filing fee to establish small entity status in a new application is merely a logical extension of that practice.

There may be some concern that elimination of the small entity statement forms will result in applicants who are not actually entitled to small entity status requesting such status. On balance, it seems that the requirements produce more errors where small entity applicants who are entitled to such status run afoul of procedural hurdles created by the former requirements of § 1.27 than the requirements prevent status claims for those who are not in fact entitled to such status.

Continued Obligations for Thorough Investigation of Small Entity Status: Applicants should not confuse the fact that the Office is making it easier to assert small entity status with the need to do a complete and thorough investigation before an assertion is made that they do, in fact, qualify for small entity status. It should be clearly understood that, even though it is much easier to assert and thereby establish small entity status, applicants will continue to need to make a full and complete investigation of all facts and circumstances before making a determination of actual entitlement to small entity status. Where entitlement to small entity status is uncertain, it should not be claimed. *See* MPEP 509.03. The assertion of small entity status (even by mere payment of the exact small entity basic filing fee) is not appropriate until such an investigation has been completed. Thus, in the previous example of the three pro se inventors, before one of the inventors pays the small entity basic filing or basic national fee to establish small entity status, the single inventor asserting entitlement to small entity status needs to check with the other two inventors to determine whether small entity status is appropriate.

If small entity status is desired on the basis that the entity is a small business concern, the investigation should include a review of whether the business is a small business concern as defined by section 3 of the Small Business Act (Public Law 85–536 as amended by Public Law 106–50). Review of whether the business is a ''concern'' as the term is used in the regulations promulgated by the Small Business Administration at 13 CFR 121 is also appropriate. Applicants should recognize that more is involved than merely determining that the number of employees of the business does not exceed a numerical cap. While 13 CFR 121.802 specifically addresses the size standards for paying reduced patent fees, it is emphasized that the provisions of general applicability set forth in 13 CFR 121 also apply. Thus, the definition of ''business concern'' set forth in 13 CFR 121.105, the provisions regarding what is an affiliation as set forth in 13 CFR 121.103, and the provisions on the manner in which the number of employees should be calculated as set forth in 13 CFR 121.106 are all read into 13 CFR 121.802. Additionally, if the business has assigned, granted, conveyed or licensed (or is under an obligation to do so) any rights in the invention to others directly or indirectly, the same review

for each other entity would also be appropriate.

Furthermore, once status as a small entity has been established in an application, a new determination of entitlement to small entity status is needed when the issue fee is due and when any maintenance fee is due. It should be appreciated that the costs incurred in appropriately conducting the initial and subsequent investigations may outweigh the benefit of claiming small entity status. For some applicants it may be desirable to file as a large entity (by not filing a small entity statement and by submitting large entity fees) rather than undertaking the appropriate investigations which may be both difficult and time-consuming.

The intent of § 1.27 is that the person making the assertion of entitlement to small entity status is the person in a position to know the facts about whether or not status as a small entity can be properly established. That person, thus, has a duty to investigate the circumstances surrounding entitlement to small entity status to the fullest extent. Therefore, while the Office is interested in making it easier to claim small entity status, it is important to note that small entity status must not be claimed unless the person or persons can unequivocally make the required self-certification. Sections 1.27(h)(1) and (2) recite former provisions in §§ 1.28(d)(1) and (2) relating to fraud practiced on the Office.

Consistent with § 1.4(d)(2), the payment of a small entity basic filing or national fee constitutes a certification under § 10.18(b). Thus, a simple payment of the small entity basic filing or basic national fee, without a specific written assertion, activates the provisions of § 1.4(d)(2) and, by that, invokes the self-certification requirement set forth in § 10.18(b), regardless of whether the party is a practitioner or non-practitioner.

Clarification of Need for Investigation: Section 1.27(f) is clarified by explicitly providing that a determination ''should'' be made of entitlement to small entity status according to the requirement set forth in § 1.27(a) prior to asserting small entity status. The need for such a determination of entitlement to small entity status prior to assertion of small entity status is set forth in terms of that there ''should'' be such a determination, rather than that there ''must'' be such a determination. In view of the ease with which small entity status will now be obtainable, it is deemed advisable to provide an explicit direction that a determination of entitlement to small entity status, pursuant to § 1.27(a), should be made before its assertion. Consideration was given to making the need for a determination a requirement rather than advisory; however, the decision was made to make it advisory, particularly in view of the following possible scenario: One of three inventors submits a written assertion of entitlement to small entity status without making any determination of entitlement to such status, such as by checking with the other two inventors to see if they have assigned any rights in the invention. Small entity status is proper at the time asserted notwithstanding the lack of a proper determination. If the determination is set forth as a requirement (''must''), the lack of such a determination might act to cause an unduly harsh result where small entity status was in fact appropriate and the failure to check prior to assertion is innocent. It is recognized that the use of ''should'' may cause concern that a cavalier approach to asserting entitlement to small entity status may be taken by encouraging some who are asserting status not to make a complete determination as the determination is not set forth as being mandatory. On balance, it is thought that the use of ''should'' will lead to more equitable results. The danger of encouraging the assertion of small entity status without a prior determination as to qualification for small entity status is thought to be small, because if the status turns out to be improper, the lack of a prior determination may result in a failure to meet the lack of deceptive intent requirements under § 1.27(h) or § 1.28(c). The Office has noted that any attempt to improperly establish status as a small entity will be viewed as a serious matter. See MPEP 509.03.

Removal of Status: Section 1.27(g)(2) is also clarified by providing that once small entity status is established in an application, any change in status from small to large entity also requires a specific written assertion to that extent, rather than only payment of a large entity fee, similar to current practice. For example, when paying the issue fee in an application that has previously been accorded small entity status and the required new determination of continued entitlement to small entity status reveals that status has been lost, applicant should not just simply pay the large issue fee or cross out the recitation of small entity status on the returned copy of the notice of allowance (PTOL–85(b)), but should submit a separate paper requesting removal of small entity status pursuant to § 1.27(g)(2).

Correction of any inadvertent and incorrect establishment of small entity status is by way of a paper under § 1.28(c) as in former practice.

Paragraph by paragraph analysis: Section 1.27 is amended: (1) in its title to reflect placement of the definitions for small entities in the section (transferred from former § 1.9(f)), (2) to indicate that an establishment of small entity status permits the payment of small entity fees, and (3) to reflect transfer of subject matter from § 1.28 relating to determination of entitlement to and notification of loss of entitlement to small entity status, and fraud on the Office.

Section 1.27 is amended to provide the definition of who can qualify to pay small entity fees: the amendments (1) define a ''person'' to include inventors and also noninventors holding rights in the invention; (2) explain that qualification depends on whether any rights in the invention were transferred and to whom; (3) provide that a license by a person to the Government under certain situations does not bar entitlement to small entity status.

Section 1.27(a) contains the subject matter relating to definitions of small entities: (1) Persons, (2) small business concerns; and (3) nonprofit organizations, in one paragraph rather than previously in §§ 1.9(c) through (e). The expression ''independent inventor'' of former § 1.9(c) is replaced with the term ''person'' in current § 1.27(a)(1) (and other paragraphs of this section). The term ''person'' in § 1.27(a) includes individuals who are inventors and also individuals who are not inventors but who have been transferred some right or rights in the invention. This clarifies that individuals who are not inventors but who have rights in the invention are covered by the provisions of § 1.27.

Sections 1.27(a)(2)(i) and (a)(3)(i) retain the requirement of former § 1.27 that in order for small entity businesses and nonprofit organizations to remain entitled to small entity status, they must not in some manner transfer or be under an obligation to transfer any rights in the invention to any party that would not qualify for small entity status. The absence of this requirement from former §§ 1.9(d) and (e) (small business concern and nonprofit organization, respectively), notwithstanding its presence in former § 1.9(c) (independent inventor), led to confusion as to the existence of such a requirement for small businesses concerns and nonprofit organizations. Former §§ 1.9(d) and (e), where this requirement was absent, have been deleted and it is now made clear that these rights transfer requirement applies to all parties (independent inventors, small business concerns and nonprofit organizations, respectively).

Section 1.27(a)(2)(ii) has the term ''size'' removed from the reference to standards set by the SBA as possibly misleading as the SBA standards for entitlement to small entity status for small businesses require more than a size determination.

Section 1.27(a)(4)(i) provides a new exception, relating to the granting of a license to the U.S. Government by a person, that results from a particular rights determination. Such a license would not bar entitlement to small entity status. Similarly, § 1.27 (a)(4)(ii) has transferred to it (from former §§ 1.27(c)(2) and (d)(2)) the current exceptions relating to a licence to a Federal agency by a small business or a nonprofit organization resulting from a particular funding agreement.

Sections 1.27(b) through (e) are reformatted and amended to recite ''assertion'' as a new means for establishing small entity status to replace ''statement,'' and new Sections 1.27 (f), (g)(1) and (g)(2), and (h) are added.

Section 1.27(c) is reformatted to add §§ 1.27(c)(1) through (c)(4).

Section 1.27(c)(1) permits assertion of small entity status by a writing that is clearly identifiable (§ 1.27(c)(1)(i)), is signed (§ 1.27(c)(1)(ii)), and conveys the concept of small entity status without the need for specific words but with a clear indication of an intent to assert entitlement to small entity status (§ 1.27(c)(1)(iii)).

Section 1.27(c)(2) makes submission of a written assertion to obtain small entity status easier in view of increased categories of parties who could sign and file such a paper. The parties who can *sign* the written assertion are identified as: one of the parties who can currently submit a paper under § 1.33(b) (§ 1.27(c)(2)(i)), at least one of the individuals identified as an inventor (even though a § 1.63 executed oath or declaration has not been filed) (§ 1.27(c)(2)(ii)) rather than all the inventors (applicants) as required by § 1.33(b)(4) for other types of papers, or a partial assignee (§ 1.27(c)(2)(iii)) rather than all the partial assignees and any applicant retaining an interest as required by § 1.33(b)(3) for other types of papers. A § 3.73(b) certification is not required for an assignee under either §§ 1.27(c)(2)(i) or (iii). The parties who can file the signed written assertion include any one of the identified inventors (§ 1.27(c)(2)(ii)), but not a partial assignee (§ 1.27(c)(2)(iii)) unless resort is made to a party identified under § 1.33(b).

Section 1.27(c)(3) permits the payment, by any party, of an exact amount of one of the small entity basic filing (§§ 1.16(a), (f), (g), (h), or (k)) or basic national (§§ 1.492(a)(1) through (a)(5)) fees to be treated as a written assertion of entitlement to small entity status even where an incorrect type of basic filing or basic national fee is inadvertently selected in error. Section 1.27(c)(3)(i) provides that where small entity status was accorded based on the payment of a wrong type of small entity basic filing or basic national fee, the correct small entity amount would still be owed along with the surcharge set forth in §§ 1.16(e) or (l) for the basic filing fee (there is no surcharge for the basic national fee). Section 1.27(c)(3)(ii) provides that payment of a small entity fee in its exact amount for a fee other than what is provided for in § 1.27(c)(3) is not sufficient to establish small entity status absent a concomitant written assertion of entitlement to small entity status. After a basic filing or basic national fee is paid as a large entity, a refund under § 1.28(a) of the large entity portion can only be obtained by establishing small entity status by a written assertion and not by paying a second basic filing or basic national fee in a small entity amount. Payment of a large entity basic filing or basic national fee precludes paying a second basic filing or national fee in a small entity amount to establish small entity status.

Section 1.27(c)(4) recites material transferred from former § 1.28(a)(2).

Section 1.27(d) is amended to provide that fees other than the basic filing and basic national fees can only be paid in small entity amounts if submitted with or subsequent to a written assertion of entitlement to small entity status. For refunds, where the small entity assertion is submitted after payment of a large entity fee (rather than with or subsequent to payment of a small entity fee), the paragraph clarifies that an exception exists for § 1.28(a) refunds (of the large entity portion of a fee within three months of payment thereof if the refund request is accompanied by a written assertion of entitlement to small entity status).

Section 1.27(e)(1) is added to reference § 1.27(g)(1) as the means of changing small entity status. It is clarified that where rights in an invention are assigned, or where there is an obligation to assign, to a small entity subsequent to an assertion of entitlement to small entity status, a second assertion is not required. Section 1.27(e)(2) clarifies that once small entity status is withdrawn a new written assertion is required to again obtain small entity status.

Section 1.27(f) is added to clarify the need to determine entitlement to small entity status prior to asserting small entity status, and that the Office generally does not question assertions of entitlement to small entity status.

Section 1.27(g)(1) is added to contain material transferred from former § 1.28. Section 1.27(g)(2) is added to revise the current reference to the party who can sign a notification of loss of entitlement to small entity status to require a party identified in § 1.33(b).

Sections 1.27(h)(1) and (2) are added to contain material transferred from former §§ 1.28(d)(1) and (d)(2) relating to fraud attempted or committed on the Office in regard to paying small entity fees. The material has been reformatted slightly to create §§ 1.27(h)(1)(i) and (ii), and §§ 1.27(h)(2)(i) and (ii).

Comment 12: Two comments state that the term ''person'' as proposed in § 1.9(f) (now transferred to § 1.27(a)(1)) is confusing. While person is defined in the first sentence as an inventor or other individual, the second sentence rather than using person uses inventor or other individual as if to imply that an inventor or individual who has transferred some rights is not a person within the meaning of § 1.27. This seems to be inconsistent with § 1.27(c) that qualifies ''person'' as a party entitled to small entity status even if an inventor has agreed to license rights in the invention to another small entity. It was suggested that the second sentence be deleted and combined with the first sentence. An additional argument was made that while it is understood that ''person'' was being used in the context of § 1.27 small entity rights, the normal legal definition of ''person'' includes corporations and the term is therefore broader than the use made of it in § 1.27. It was suggested that another word be used or the term ''natural'' be used as a modifier.

Response: The comments are not adopted. The use of ''person'' in the first sentence of § 1.27(a)(1) is intended to refer to those who can qualify for small entity status. That the second sentence starts with ''[a]n inventor or other individual who has transferred some rights'' is intentional in that it may be that such inventor or individual cannot qualify for small entity status if rights have been transferred to a party who cannot qualify for small entity status. It is intended under § 1.27(c) that an inventor who has transferred rights to another who can qualify shall not be disqualified from claiming small entity status whether an individual, small business or nonprofit organization. The use of two sentences enables the separation of two different concepts—where no transfer of rights has occurred, and where some transfer of rights has occurred. Use of the suggested

combined sentence may not make it clear to small entities that circumstances where there is no transfer of rights are included. Similarly, it is believed that the use of the term ''person'' without a modifier of ''natural'' would have the best opportunity for being understood by the target audience of § 1.27.

Comment 13: Several comments supported the proposed change to § 1.27, as well as to §§ 1.9 and 1.28.

Comment 14: Two comments opposed the ability to obtain small entity status based on payment of a small entity filing fee in § 1.27(c)(3) (proposed as § 1.27(b)(3)) maintaining that the entire procedure is now very complex and would not be understood by the great majority of practitioners and their support staffs and the Office support staff that must administer the program. It is believed that it is not too much to ask that someone seeking to claim small entity status make an affirmative statement regarding eligibility for such status. Although these procedures affect small entities to a greater extent, large entities are affected by the costs that would be associated with trying to implement a complex scheme of which small entities could not properly avail themselves.

Response: The comments are not adopted. Sixty percent of all refund requests that the Office handles are related to small entity status. As outlined in the proposed rulemaking and again in this final rule, small entities are having a very difficult time obtaining, in a timely manner, a benefit that they are clearly entitled to, particularly for *pro se* inventors. The amended rule will obviate many of the difficulties now encountered by small entities. The payment of an exact amount of small entity filing fee is seen to be just as much an affirmative act as the submission of a statement of entitlement, and is probably far clearer an act of intention to claim small entity status than resort only to wide variants of language inevitably submitted by *pro se* applicants that must then be interpreted by the Office. The Office will, however, endeavor to have applicants supply an actual statement of entitlement to small entity status by providing a check box for such (with a clear easily understood statement) on application transmittal forms.

Comment 15: One comment states that § 1.27(a)(4)(ii) (formerly § 1.9(f)(4)(ii)) is confusing because it states that a ''license'' to a Federal agency is not a ''license'' *per se.* Alternative language is suggested to clarify the section.

Response: The comment is adopted.

Comment 16: One comment suggested a further simplification by permitting any person authorized to act on behalf of the inventor/applicant to make an assertion of entitlement to small entity status. The Office should have an announced policy of not verifying whether the person making the assertion is in fact authorized with the burden resting with applicant that the person making the assertion is authorized to do so. The situations where a person would not be authorized are thought to be so rare as to justify the Office removing itself from determining proper authorization.

Response: The comment is not adopted. Sections 1.27(c)(2)(i) through (c)(2)(iii) identifies certain parties who can sign a written assertion of entitlement to small entity status. The parties, while not all encompassing, are nevertheless broadly defined and include all the parties who can reasonably be expected to desire to submit a written assertion. It is not seen that the Office should accept a written paper from a party not so included. Section 1.27(c)(3), as made final, permits any party (in addition to those parties defined in § 1.27(c)(2)) to pay the basic small entity filing fee and thereby assert entitlement to small entity status. If a need were to arise for some party other than those defined in § 1.27(c)(2) to assert small entity status, it would be expected to be close to the time of filing the application and when the filing fee needs to be paid. In such circumstances, any party could pay the small entity filing fee. To permit the acceptance of a paper by a third party with whatever statements both germane to small entity entitlement and whatever other matters might be raised therein would seem to be burdening applicants with unnecessary problems.

Section 1.28: Section 1.28 is amended to be entirely reformatted with some material transferred to § 1.27.

Section 1.28(a) is amended to allow a three-month period (formerly a two-month period) for refunds based on later establishment of small entity status. See further discussion in § 1.28(b)(1).

Section 1.28(b) is amended to set forth § 1.28(b)(1), defining the start date of the three-month refund period of § 1.28(a) to be the date that the full fee has been paid (transferred from former § 1.28(a)(1)), and § 1.28(b)(2), stating that the deficiency amount owed under § 1.28(c) is calculated by using the date on which the deficiency was paid in full (transferred from former § 1.28(c)).

Sections 1.28(b)(1) and (2) were proposed to be amended to refer to § 1.22(c) setting forth a definition of when a fee has been paid by the means used to pay the fee, but will not be so amended as the proposed amendment to § 1.22(c) will not be made. The subject matter of proposed § 1.22(c), which proposed to set forth that the filing date for an authorization to charge fees starts the period for refunds under § 1.28(a) will, however, be given effect by internal instruction as of the effective date of the instant final rule and will be reflected in the MPEP. See the discussion of § 1.22, above. The previous time period for a refund request was two months from payment of the full fee. The date of payment for refund purposes varied depending on the means the applicant used to pay the required fee. For example, if the applicant paid the required fee by check, the date of payment was the date on which the fee paper, including the check, was filed in the Office. If the applicant authorized a charge to a deposit account, however, the date of payment was the date the Office debited the deposit account. In view of the change in practice that results in § 1.28(b)(1) according the same date of payment for checks and authorizations to charge deposit accounts, the refund period of § 1.28(a) is extended to three months. This will in part offset any shortening of the refund time period that may result from starting the time period as of the receipt (or §§ 1.8 or 1.10) date of the fee paper instead of the debit date for an authorization to charge a deposit account. Additionally, in view of changes in practice under § 1.27 to ease the claiming of small entity status, the need for refunds should diminish, and the different payment date of an authorization to charge a deposit account for small entity refund purposes should not cause much inconvenience to applicants.

Section 1.28(c) is amended to require that deficiency payments must be submitted separately for each file (§ 1.28(c)(1)) and must include the itemization of the deficiency payment by identifying: the type of fee along with the current fee amount (§ 1.28(c)(2)(ii)(A)), the small entity amount paid and when (§ 1.28(c)(2)(ii)(B)), the deficiency owed for each individual fee paid in error (§ 1.28(c)(2)(ii)(C)), and the total deficiency payment owed (§ 1.28(c)(2)(ii)(D)), and is amended to provide that any failure to comply with the separate payment and itemization requirements will allow the Office at its option to charge a processing fee or set a non-extendable one-month period for compliance to avoid return of the paper (§ 1.28(c)(3)).

In each of Fiscal Years 1999 and 2000, certain patent fees were reduced. *See*

Revision of Patent and Trademark Fees for Fiscal Year 2000, Final Rule, 64 FR 67774 (December 3, 1999), and *Revision of Patent Fees for Fiscal Year 1999*, Final Rule, 63 FR 67578 (December 8, 1998). Thus, a sentence was added in § 1.28(c)(2)(i) that requires a deficiency payment to be at least equal to the amount paid in error as a small entity and is also calculated as of the date the deficiency is paid in full. For example, the basic filing fee for a utility application was reduced from $760 to $690. Where the small entity basic filing fee had been improperly paid by submission of $380 under the prior fee amount, if the error was determined and paid in full when the new amount is in effect, the balance owed at the date of payment in full would be $380 (the amount that is at least equal to the amount paid in error and not $310 (the new large entity amount of $690—the small entity amount paid in error of $380). (Note, for revival under § 1.137, if abandonment occurred for failure to pay a basic filing fee, the amount owed would be the fee in effect when the § 1.137 petition was filed and not the fee previously owed causing abandonment.).

Paragraph by Paragraph Analysis: The title of § 1.28 is revised in view of transfer of material to § 1.27 to focus on refunds and on how errors in status are excused.

Sections 1.28(a) through (c) are reformatted.

Section 1.28(a)(1) is amended as § 1.28(a).

Section 1.28(a) is amended to clarify that the period for a refund runs from payment of the ''full fee,'' and that it is the payment of the full fee that is considered the significant event relative to establishing status for a particular fee. Additionally, § 1.28(a) amends the time period for requesting a refund based upon later establishment of small entity status. The time period is three months measured from the date of the timely payment of the full fee.

Some subject matter in former § 1.28(a)(2) has been transferred to § 1.27(c)(4). The next to last sentence, relating to filing a continuing or reissue application and referencing a small entity statement in the prior application or patent, has been deleted as unnecessary. The formerly required reference to status in the prior application or patent is replaced by the equally easily written assertion of § 1.27(c)(4) in the related, continuing or reissue application. Written references to small entity status in a prior application, including submission of a copy of the small entity statement in a prior application, submitted in a continuing application subsequent to the effective date of any final rule, will be liberally construed under § 1.27(c)(1)(iii). Similarly, the last sentence of current § 1.28(a)(2) is deleted as the payment option for establishing small entity status in continuing or reissue applications has been expanded in § 1.27(c)(3) to include all applications.

Caution: Although the Office intends to liberally construe what is deemed to be an assertion of small entity status, the concept of entitlement must be clearly conveyed.

Example 1: A prior application has been accorded small entity status. A continued prosecution application (CPA) under § 1.53(d) is filed with a general authorization to charge fees that does not state that the fees to be charged are small entity fees. Even though the CPA contains the same application number as its prior application (and the small entity statement), it would not be accorded small entity status and large entity filing fees would be immediately charged. This would be so because a new determination of entitlement to small entity status must be made upon filing of a new application, such as a CPA. Accordingly, in filing the CPA there must be some affirmative act to indicate that the determination has been done anew and small entity status is still appropriate. Where a copy of the small entity statement from the prior application, or a written assertion in the CPA application transmittal letter, or an authorization to charge small entity fees was present, the result would be reversed and small entity status would be accorded the CPA application on filing.

Example 2: A request for continued examination under § 1.114 is not the filing of a new application and the application would retain any small entity status previously accorded without the need to do a new investigation or request status by written assertion or payment of an exact small entity § 1.17(e) fee.

The subject matter in former § 1.28(a)(3) has been transferred to § 1.27(e)(1).

Section 1.28(b) is amended to have its subject matter transferred to §§ 1.27(g)(1) and (2). New §§ 1.28(b)(1) and (b)(2) are added. Sections 1.28(b)(1) and (b)(2) were proposed to reference § 1.22(c) which was proposed to define the date that a fee was considered paid. In view of the decision not to go forward with the proposed change to § 1.22(c), the references to § 1.22(c) in §§ 1.28(b)(1) and (2) will not proceed.

Section 1.28(b)(1) defines the date a fee is paid for the purpose of starting the three-month period for refund. Former practice for authorizations to charge deposit accounts was to give benefit of the date that the deposit account was actually debited by the Office, which was a later time than when the paper authorizing charge of the fee to a deposit account was filed with the Office. That practice is now changed, see discussion re § 1.22, and the change will be reflected in the MPEP. It is the date the fee paper is considered received in the Office, not the date of debit of the fee to a deposit account, that will start the three-month refund period.

Section 1.28(b)(2) states that the date when a deficiency payment, pursuant to § 1.28(c), is paid in full determines the amount of deficiency that is due.

Example: A small entity issue fee has been paid in error in January and a paper under § 1.28(c) was submitted the following June with the deficiency payment calculated based on the fees in effect as of June. The deficiency payment was incorrectly determined so that the full amount owed (for the issue fee) was not submitted in June. If the mistake in the June payment is not discovered until the following November, the extra amount owed must be recalculated to take into account any (later legislation, October 1) increase in the issue fee.

Section 1.28(c) is amended to recite that separate submissions, including separate payments and itemizations, are required for any deficiency payment.

Section 1.28(c)(1) requires that a deficiency paper/itemization/submission be limited to one application or one patent file. Where, for example, the same set of facts has caused errors in payment in more than one application and/or patent file, a separate paper would need to be submitted in each file for which an error is to be excused.

Section 1.28(c)(2) requires that for each fee that was erroneously paid as a small entity, the deficiencies owed must be paid, and the payment of the deficiencies must be itemized. Section 1.28(c)(2)(i) provides in part where there has been a fee decrease, the deficiency owed is equal to the amount (previously) paid in error and not the difference between the amount (previously) paid in error and the new lower large entity fee. Section 1.28(c)(2)(ii) requires the following itemizations: the particular fee involved (*e.g.*, basic filing fee, extension of time fee) (§ 1.28(c)(2)(ii)(A)), the small entity fee amount actually paid and when (for example, distinguishing between two one-month extension of time fees erroneously paid on two different dates) (§ 1.28(c)(2)(ii)(B)), the actual deficiency owed for each fee previously paid in error (§ 1.28(c)(2)(ii)(C)), and the total deficiency owed that is the sum of the individual deficiencies owed (§ 1.28(c)(2)(ii)(D)).

Section 1.28(c)(3) addresses the failure to comply with the separate submission, including separate payment

and itemization requirements of §§ 1.28(c)(1) and (c)(2). Section 1.28(c)(3), upon failure to comply, permits the Office at its option either to charge a processing fee (§ 1.17(i) is suitably amended) to process the paper or require compliance within a one-month non-extendable time period to avoid return of the paper.

Former §§ 1.28(d)(1) and (d)(2) are amended to have the material relating to fraud attempted or committed on the Office as to paying of small entity fees, transferred to §§ 1.27(h)(1) and (2). New § 1.28(d) is added to clarify that any paper submitted under § 1.28(c) is also treated as a notification of loss of small entity status under § 1.27(g)(2).

Section 1.33: Section 1.33(a) is reformatted to create additional §§ 1.33(a)(1) and (a)(2) to separately identify the parties who can change a correspondence address depending upon the presence or absence of a § 1.63 oath/declaration. The revision is intended to make clear what may be a confusing practice to applicants as to which parties can set forth or change a correspondence address when an application does not yet have an executed § 1.63 oath or declaration by any of the inventors. See § 1.14(d)(4) for a similar change regarding status and access information. In this section references to a § 1.63 oath/declaration are intended to mean an executed oath/declaration by any inventor, but not necessarily all the inventors.

Section 1.33(a) is amended to provide that in a patent application the applicant must, either in an application data sheet (§ 1.76), or in a clearly identifiable manner elsewhere, in any papers submitted with an application filing, specify a correspondence address to which the Office will send notices, letters and other communications relating to the application. It is now stated that where more than one correspondence address is specified, the Office would determine which one to establish as the correspondence address. This is intended to cover the situation where an unexecuted application is submitted with conflicting addresses, such as one correspondence address being given in the application transmittal letter, and a different one in an accompanying unexecuted § 1.63, or other similar situations. The determination of which of the conflicting correspondence addresses to use will be made on a case by case basis, to include such factors as: use of the correspondence address in the earliest of two unexecuted declarations submitted at different times, or if conflicting addresses appear in the same declaration, use of the first correspondence address.

Section 1.33(a) requests the submission of a daytime telephone number of the party to whom correspondence is to be addressed. While business is to be conducted on the written record (§ 1.2), a daytime telephone number would be useful in initiating contact that could later be reduced to a writing. The phone number would be changeable by any party who could change the correspondence address. The term ''registered'' has been placed before the expression ''attorney or agent'' for clarification purposes. See also § 1.33(b) of this section and sections 1.34 and 1.36.

Section 1.33(a)(1) provides that any party filing the application and setting forth a correspondence address could later change the correspondence address provided that a § 1.63 oath/declaration by any of the inventors has not been submitted. The parties who may so change the correspondence address would include only the one inventor filing the application, even if more than one inventor was identified on the application transmittal letter. If two of three inventors filed the application, the two inventors filing the application would be needed to change the correspondence address. Additionally, any registered practitioner named in the application transmittal letter, or a person who has the authority to act on behalf of the party that will be the assignee (if the application was filed by the party that will be the assignee), could change the correspondence address. A registered practitioner named in a letterhead would not be sufficient, but rather a clear identification of the individual as being a representative would be required. A company (to whom the invention has been assigned, or to whom there is an obligation to assign the invention) who files an application, is permitted to designate the correspondence address, and to change the correspondence address, until such time as a (first) § 1.63 oath/declaration is filed. The mere filing of a § 1.63 oath/declaration that does not include a correspondence address does not affect any correspondence address previously established on filing of the application, or changed per § 1.63(a)(1), even if the application was filed by a company that is only a partial assignee. The expression ''party that will be the assignee,'' rather than assignee, is used in that until a declaration is submitted, inventors have only been identified, and any attempted assignment, or partial assignment, cannot operate for Office purposes until the declaration is supplied. Hence, if the application transmittal letter indicates that the application is being filed on behalf of XYZ company, with an assignment to be filed later, XYZ company would be allowed to change the correspondence address without resort to § 3.73(b) until an executed oath or declaration is filed, and with resort to § 3.73(b) after the oath or declaration is filed.

Section 1.33(a)(2) retains the current requirements for changing a correspondence address when a § 1.63 oath/declaration by any of the inventors has been filed. Where a correspondence address was set forth or changed pursuant to § 1.33(a)(1) (prior to the filing of a § 1.63 oath or declaration), that correspondence address remains in effect upon filing of a § 1.63 declaration and can then only be changed pursuant to § 1.33(a)(2).

Section 1.33(b) has been simplified to make it easier to understand who are appropriate parties to file papers, particularly in view of the change to § 3.71(b). The paragraph has also been amended to provide an exception for the filing of a written assertion of small entity status under § 1.27(c)(2)(ii). One of several inventors will now be able to sign a written assertion of small entity status and be an appropriate party to file such assertion/paper.

Section 1.33(b)(1) has the term ''registered'' placed before the expression ''attorney or agent'' for clarification purposes. See also § 1.33(a) and §§ 1.34 and 1.36.

Section 1.33(b)(3) is amended to add a reference to § 3.71.

Comment 17: One comment was received requesting that the ability to change the correspondence address not be keyed to the filing of a § 1.63 oath/declaration, especially when such oath/declaration is signed by less than all the inventors and when it may in no way involve the correspondence address. The flexibility to change the correspondence address established by § 1.33(a)(1) should remain until a party set forth in § 1.33(b), except § 1.33(b)(2), establishes a correspondence address.

Response: The comment is not adopted. Section 1.33(a)(1) increases the flexibility in changing a correspondence address. Such increased flexibility, however, should not extend past the time that applicants can reasonably be expected to set forth a correspondence address, such as when the inventors are named by the submission of an oath/declaration. The submission of the oath/declaration will not alter the current correspondence address of record unless the oath/declaration intentionally does so by identifying a correspondence address, or an accompanying paper to the oath/declaration does so. Upon

submission of the oath/declaration, the inventors are known for the first time and it is now their call as to the appropriate correspondence address absent intervention by the assignee of the entire right, title, and interest. It is inappropriate that once an oath/declaration is submitted, a practitioner without power of attorney or only one of the inventors can continue to change the correspondence address.

Section 1.34: Sections 1.34(a) and (b) are amended to incorporate a reference to § 1.31. Section 1.34(b) is amended to place the term ''registered'' before the expression ''attorney or agent.'' Unlike § 1.31, which provides for an applicant being represented by registered patent attorney or agent, former § 1.34(b) (and § 1.36) refers to an attorney or agent who represents an applicant. The Office of Enrollment and Discipline receives calls inquiring if § 1.34(b) (and § 1.36) explicitly or implicitly authorize unregistered attorneys to practice before the Office in view of the absence of the term ''registered'' in these sections, which is not the case. The amendments to §§ 1.34(a) and (b) (and § 1.36) bring §§ 1.34(a) and (b) (and § 1.36) into conformity with § 1.31, which permits an applicant to be represented by a registered attorney, or a registered agent, and clarifies that the attorney or agent referenced in §§ 1.34(a) and (b) (and § 1.36) is only the registered attorney or registered agent referenced in § 1.31. See also §§ 1.33(a) and (a)(1), and § 1.36.

Section 1.36: See the discussion relating to § 1.34.

Section 1.41: Section 1.41(a)(1) is amended to indicate that a paper including the processing fee set forth in § 1.17(i) is required for supplying or changing the name(s) of the inventor(s) where an oath or declaration prescribed in § 1.63 is not filed during pendency of a nonprovisional application, rather than a petition including a petition fee, for consistency with the amendment to § 1.17(i).

Section 1.41(a)(2) is amended to indicate that a paper including the processing fee set forth in § 1.17(q) is required for supplying or changing the name(s) of the inventor(s) where a cover sheet prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, rather than a petition including a petition fee, for consistency with the amendment to § 1.17(q).

Section 1.41(a)(3) is amended to delete the language concerning an alphanumeric identifier, and to provide that the name, residence, and citizenship of each person believed to be an actual inventor should be provided when the application papers pursuant to § 1.53(b) are filed without an oath or declaration, or the application papers pursuant to § 1.53(c) are filed without a cover sheet.

Section 1.41(a)(4) is added to set forth that the inventors who submitted an application under § 1.494 or § 1.495 are the inventors in the international application designating the United States and that the provisions of § 1.48(f)(1), whereby submission of an executed oath/declaration operates to change the inventorship, do not apply to applications entering the national stage.

Section 1.41(c) is amended by replacement of the term ''file'' with a recitation of physical or electronic delivery of the application to the Office. Section 1.41(c) permits any person authorized by the applicant to file a patent application in order to receive a filing date. The amendment clarifies that § 1.41(c) is intended to apply solely to the (physical or electronic) delivery of a patent application to the Office as opposed to being inclusive of acts preceding delivery of the application relating to drafting or otherwise preparing an application.

Comment 18: One comment opposed the change to § 1.41(a)(3). The comment noted that the Office gave no justification for the change deleting the instruction that an alphanumeric identifier should be supplied where no inventor's name is being given. The change is believed to give the impression of reversing the practice of not requiring identification of inventors on filing of the application.

Response: The comment is not adopted. The availability of an alphanumeric identifier is no longer explicitly set forth as the Office much prefers that at least one inventor be identified, particularly to aid in the national security screening of applications. To the extent that the presence of the instruction would seem to encourage use of an identifier other than the inventors, it is desirable to eliminate it. There is, however, no intent on the part of the Office to reverse the current practice and ban the use of an identifier other than an inventor's name. It is noted that where an inventor's name is not supplied, some other identifier is usually present, such as an attorney docket number, and that may continue to be used as an identifier in the absence of an inventor's name.

Comment 19: One comment opposed the change to § 1.41(a)(4) stating that it is unclear as to what the change means and that it would seem to preclude correction of the inventorship after an international application is filed.

Response: The comment is adopted in part as a clarifying parenthesis has been added to the paragraph stating that § 1.48(f) does not apply. The intent of the change is not to preclude correction of inventorship in a 35 U.S.C. 371 national stage application, but to reflect that filing an international application signed by all applicants and publishing it locks in the naming of the inventors. Filing of a declaration does not reset the inventors as it does in national 35 U.S.C. 111 practice. Correction of inventorship for a national stage application can be done under the provisions of §§ 1.48(a) through (c).

Section 1.44: Section 1.44 is removed and reserved to eliminate the requirement that proof of the power or authority of the legal representative be recorded in the Office or filed in an application under §§ 1.42 or 1.43. Although proof of authority is no longer required to be submitted to the Office, applicants may wish to consider obtaining proof of authority of the legal representative and recording such a document with any assignment documents for record-keeping purposes. In order to make a patent application on behalf of a deceased or incapacitated inventor, the legal representative may now simply sign the § 1.63 oath or declaration (which includes the full name and citizenship of the deceased inventor as well as the residence and mailing address, if not provided on an application data sheet) as the legal representative of the particular inventor with the title ''Legal Representative'' placed under the signature. In other words, in a signature block containing the deceased or incapacitated inventor's name, the legal representative will sign ''for'' the deceased or incapacitated inventor supplying the representative's name and stating that he or she is the legal representative. In addition, the legal representative should provide his or her mailing address so that the Office can directly communicate with the legal representative if necessary. See § 1.64(b).

The deletion of the § 1.44 proof requirement for the legal representative of §§ 1.42 and 1.43 will be effective on the date of publication in the **Federal Register** with § 1.64 as to all pending papers under §§ 1.42 and 1.43 that have not had the proof requirement satisfied. If a requirement for proof of authority has been made by an examiner, the requirement can be satisfied by a reply referencing this final rule.

Section 1.47: Section 1.47 is amended to refer to ''the fee set forth in § 1.17(h)'' for consistency with the amendment to § 1.17(h) and (i). See discussion of the amendment to § 1.17. Section 1.47 is also amended to add a new § 1.47(c) providing that the Office will send

notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under § 1.47, and will publish notice of the filing of the application in the *Official Gazette.* This provision is currently included in each of §§ 1.47(a) and 1.47(b). Section 1.47(c) also provides that the Office may dispense with such notice provisions in a continuation or divisional application where notice regarding the filing of the prior application has already been sent to the nonsigning inventor(s). The patent statute gives the Office great latitude as to the notice that must be given to an inventor who has not joined in an application for patent. *See* 35 U.S.C. 116, ¶ 2 (''after such notice to the omitted inventor as [the Commissioner] prescribes''), and 118 (''upon such notice to [the inventor as the Commissioner] deems sufficient''). Providing notice to a nonjoined inventor in a continuation or divisional application places a significant burden on the Office, especially when such continuation or divisional application is filed using a copy of the oath or declaration from a prior application under § 1.63(d). In addition, providing additional notice to the nonjoined inventor in the continuation or divisional application provides little actual benefit to the nonjoined inventor, as a similar notice was previously given during the processing of the prior application. Thus, the Office considers it appropriate to dispense with notice under § 1.47 in situations (continuations or divisionals of an application accorded status under § 1.47) in which the nonjoined inventor was previously given such notice in a prior application.

Section 1.48: Section 1.48 is amended to have the title revised to reference the statutory basis for the rule, 35 U.S.C. 116.

Sections 1.48(a) through (c) are amended to: Delete the recitation of ''other than a reissue application'' as such words are unnecessary in view of the indication in the title of the section that the section does not apply to reissue applications and the revision to § 1.48(a) (discussed below), to change ''When'' to ''If,'' and to add ''nonprovisional'' before ''application'' where it does not already appear.

Sections 1.48(a)(1) through (e)(1) are revised to replace the reference to a ''petition'' with a reference to a ''request.'' What is meant to be encompassed by the term ''petition,'' as it was used in the sections, may be better defined by the term ''request.'' The presence of ''petition'' formerly in the sections was misleading to the extent that it may indicate to applicants that papers under this section have to be filed with the Office of Petitions when in fact amendments to correct the inventorship under § 1.48 are to be decided by the primary examiners in the Technology Centers and should be submitted there. *See* MPEP 1002.02(e). Where, however, the § 1.48 request is accompanied by a petition under § 1.183 seeking waiver of a requirement under § 1.48, both papers should be directed to the Office of Petitions.

The requirements for a statement formerly in §§ 1.48(a)(1), (c)(1), and (e)(1) are placed in §§ 1.48(a)(2), (c)(2), and (e)(2) and corresponding changes made in subsequent paragraphs.

Sections 1.48(b) and (d) are revised to indicate that a request to correct the inventorship thereunder must be signed by a party as set forth in § 1.33(b) (which would enable a practitioner alone to sign all the needed papers). The inventors, whether being added, deleted, or retained, are not required to participate in a correction under these paragraphs. Thus, the inventor(s) to be deleted pursuant to § 1.48(b) in a nonprovisional application, or added pursuant to § 1.48(d) in a provisional application, and those inventors that are retained in either situation, are not required to participate in the inventorship correction, such as by signing a statement of facts, or an oath or declaration under § 1.63.

Sections 1.48(a) through (e) are revised to define the fee required as a ''processing'' fee, to delete the reference to a ''petition,'' and to indicate that amendment of the application to correct the inventorship would require the filing of a request to correct the inventorship along with other items, as set forth in the respective paragraphs of this . The latter change is not one of substance but a clarification that the amendment requirement of the statute, 35 U.S.C. 116, merely refers to the change in Office records (face of the application file wrapper corrected, notation on a previously submitted § 1.63 oath/declaration, change in Patent Application Location and Monitoring (PALM) data, and a corrected filing receipt issued) that would be made upon the grant of a § 1.48 request. Thus, amendment of the inventorship in an application is not made as an amendment under § 1.121. Where there is a need to make an actual amendment under § 1.121, such as when a cover page of the specification recites the inventive entity, an amendment should also be submitted. In the absence of such an amendment, the Office may, at its option, correct the inventor's names on the cover sheet or in the specification. Where an application needs a correction of inventorship under § 1.48 and a paper is submitted with a title that does not set forth the paper as a request under § 1.48, but it is clear from the paper submitted that an inventorship correction is desired, a request for a correction of inventorship under § 1.48 will be inferred from the paper submitted and will be treated under § 1.48.

A request for a corrected filing receipt correcting a typing or office error in the names of the inventors will not ordinarily be treated under § 1.48. Any request to correct inventorship should be presented as a separate paper. For example, placing a request under § 1.48(b) to correct the inventorship in the remarks section of an amendment may cause the Office to overlook the request and not act on it.

Section 1.48(f)(1) is clarified to recite that its provision for changing the inventorship only applies if an oath or declaration under § 1.63 has not been submitted by any of the inventors, and that submission of an oath or declaration under § 1.63 by any of the inventors is sufficient to correct an earlier identification of the inventorship.

Example 1: An unexecuted application is filed identifying A, B, and C as the inventors. A § 1.63 declaration is also submitted signed only by A and naming A, B, and C as the inventors. To complete the application (§ 1.53(f)), a § 1.63 oath or declaration by B and C identifying the inventors as A, B, and C is needed. In attempting to reply to a Notice to File Missing Parts of Application requiring the missing oath or declaration by B and C, it is discovered that D is also an inventor. A declaration by A, B, C, and D, if submitted without a request under § 1.48(a) to correct the inventorship to A–D from A–C, will not be accepted as a reply to the Notice to File Missing Parts of Application.

Thus, it should be clear that a first oath or declaration under § 1.63 completed by less than all the inventors initially identified (whether the oath or declaration is submitted at the time of filing of the application or thereafter), will, under § 1.48(f)(1), lock in the inventorship, and the later filing of another declaration by a different but, the actual entire inventive entity, will not be effective under § 1.48(f)(1) to correct the inventorship.

Example 2: An application is filed identifying A, B, and C as the inventors in the application transmittal letter, and a § 1.63 declaration is concomitantly submitted only by A, naming only A, as the sole inventor. The inventorship of the application is A (because of the declaration of A). A later submitted § 1.63 declaration by A, B, and C would require a request under § 1.48(a) to correct the inventorship to A, B, and C before the declaration by A, B, and C could be accepted.

Section 1.48(f)(1) is amended to reference § 1.497(d) for submission of an executed oath or declaration naming an inventive entity different from the inventive entity set forth in the international stage when entering the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495.

Section 1.48(h) is added to indicate that the provisions of this section do not apply to reissue applications, and to reference §§ 1.171 and 1.175 for correction of inventorship in reissue applications.

Section 1.48(i) is added to reference §§ 1.324 and 1.634 for corrections of inventorship in patents and interference proceedings, respectively.

Sections 1.48(a) through (i) are amended to have titles added to make locating the appropriate paragraph easier.

Section 1.51: Section 1.51(b) is amended to include a reference to § 1.53(d), as a proper continued prosecution application under § 1.53(d) in which the basic filing fee has been paid is a complete application under § 1.51(b).

Section 1.52: The title of § 1.52 is amended to reflect the addition of § 1.52(e).

Sections 1.52(a) and (b) are amended to clarify the paper standard requirements for papers submitted as part of the record of a patent application or a reexamination proceeding. Section 1.52(a) sets forth the paper standard requirements for all papers that are to become a part of the permanent records of the Office, and § 1.52(b) sets forth the paper standard requirements for the application (specification, including the claims, drawings, and oath or declaration) or a reexamination proceeding where applicable and any amendments or corrections to the application or proceeding. Papers making up the application or proceeding where applicable or an amendment or correction to the application or proceeding must meet the requirements of §§ 1.52(a) and (b), but papers submitted for the record that do not make up the application (*e.g.,* a declaration under § 1.132) or proceeding need not meet the requirements of § 1.52(b).

Section 1.52(a)(5) provides that for papers not in compliance with § 1.52(a)(1), that applicant must, within a set time period, provide appropriate substitute papers.

Section 1.52(b)(6) is being added to include optional paragraph numbering as a basis for the new amendment practice in § 1.121 and as an aid to transitioning into total electronic filing. The amended rule language sets forth a procedure for numbering the paragraphs of the specification at the time of filing. This procedure will facilitate the entry of amendments by providing a more uniform method for identifying paragraphs in the specification to be amended, thus overcoming any differences created by word processor formatting and pagination variations.

The paragraph numbering procedure, in the interest of uniformity, encourages applicants to use four digit Arabic numerals enclosed within square brackets and including leading zeroes as the first element of the paragraph. The numbers and brackets should be highlighted in bold (*e.g.,* [**0001**]), and should appear as the first part of the paragraph immediately to the right of the left margin. Approximately four character spaces should follow the bracketed number before the beginning of the actual text of the paragraph.

A paragraph is defined as a distinct passage, or section, of the specification which has unity of meaning. A paragraph shall not contain headers or drawings, but may contain nontext elements such as tables, mathematical formulae, chemical structures, *etc.* The nontext elements shall not normally, by themselves, be considered as paragraphs but must always form part of the paragraph, either above, or around, the nontext elements, and should not be independently numbered. Any type of list, *e.g.,* a bulleted or numbered list, should be treated as part of the paragraph around or preceding the list, and should not be independently numbered. Paragraph (or section) headers, such as ''Description of the Invention'' or ''Example 3,'' are not considered part of any paragraph and should not be numbered.

The procedure for paragraph numbering encourages applicants to use any method provided by existing word processing software to provide a number as the first element of the paragraph. Handwriting of paragraphs numbers while not encouraged will be permitted.

The Office will neither number the paragraphs or sections of the specification, nor accept any instructions from applicants to do the same.

Section 1.52(b)(7) provides that where papers not in compliance with §§ 1.52(b)(1) through (b)(5) are submitted, the applicant, patent owner, or requester in a reexamination proceeding, after notice by the Office, must provide papers that do comply (§§ 1.52(b)(1) through (b)(5)) within a set time period in the notice.

Section 1.52(c) is amended to provide that: (1) alterations to the application papers must (rather than ''should'') be made before the oath or declaration is signed; (2) a substitute specification (§ 1.125) is required if the application papers do not comply with § 1.52(a) and (b) due to interlineations, erasures, cancellations or other alterations of the application papers; and (3) if an oath or declaration is a copy of the oath or declaration from a prior application, the application for which such copy is submitted may contain alterations that do not introduce matter that would have been new matter in the prior application.

Section 1.52(d) was proposed to provide separately for nonprovisional applications and provisional applications filed in a language other than English. The proposal was not carried forward in the instant rulemaking but will be treated in rulemaking relating to implementation of the eighteen-month publication provisions of the ''American Inventors Protection Act of 1999.'' *See Changes to Implement Eighteen-Month Publication of Patent Applications,* Notice of Proposed Rulemaking, 65 FR 17046, 17964 (April 5, 2000), 1233 *Off. Gaz. Pat. Office* 121 (April 25, 2000).

Section 1.52(e) is amended to itemize the parts of the specification that may be submitted on a compact disc, and to specify that a compact disc (CD–ROM or CD–R) meeting ISO 9660 format standards with ASCII data files is the only acceptable archival electronic media for submissions. The Office indicated in the Notice of Proposed Rulemaking that submissions on microfiche placed a burden on the Office and the applicant. The Office indicated that it intended to accept archival electronic media. The burden of submitting and processing large biotechnology ''Sequence Listing'' submissions in paper form can also be avoided using archival electronic media. Large tables, common in the biotechnology arts but sometimes received in other technologies, are now also included among the items that may be submitted on acceptable compact discs. Note that these specifications do not apply to the computer readable form of Section 1.821(e), which is specified therein.

Section 1.52(e)(1) recites the three types of submissions that are acceptable on the compact disc format: (1) Computer listings; (2) nucleotide and/or amino acid ''Sequence Listings'; and (3) large tables.

Section 1.52(e)(2) defines which compact disc formatted media the Office will accept for the listed submissions: compact disc—recordable (CD–Rs) and compact disc—read only memory (CD–ROMs).

Section 1.52(e)(3) set forth the standards that must be used in formatting the information on the compacts discs: ASCII and ISO 9660. Section 1.52(e)(3) also discusses the packaging of the compact discs for submission to the Office, and the contents of the associated transmittal letter.

Section 1.52(e)(4) specifies that the two copies of each compact disc are required, how the two copies must be labeled, and how the Office will treat the compact discs if they are not indeed identical (Copy 1 will be used for processing.). Replacement copies are also discussed.

Section 1.52(e)(5) indicates how the material on the compact discs will be incorporated by reference into the specification, by way of a statement under § 1.77(b)(4). Section 1.52(e)(5) also provides that the Office may require that parts of the specification that were submitted on compact disc be resubmitted on paper. Only the paper portions of the application will, under our current procedures, be published, either as published applications or patents. The Office can thus require that certain information, such as related to an elected species, be submitted in the proper form (paper) to be printed.

Section 1.52(e)(6) indicates the information that shall be placed on the labels of the compact discs to help identify them.

Section 1.52(e)(7) indicates that if a file is unreadable, on the compact discs that we have received, the Office will treat that information as not having been received. Examples of the types of difficulties that render a file unreadable are given: non-standard formatting, computer viruses and defective media. The applicant is well advised to test that the compact disc can be read by a standard office computer and is compliant with Office requirements before submission.

Comment 20: One comment opposed §§ 1.52(a)(5) and (b)(7) as proposed in that the Office would be providing a service that was not requested and charging an open-ended fee.

Response: The comment has been adopted. The rule language has been modified to provide for the mailing of a notice of the noncompliance, which notice will require the applicant, patent owner, or requester in a reexamination proceeding to submit compliant papers in reply to the notice within the time period set in the notice. The proposed option, allowing the Office to prepare compliant papers for a fee, has not been adopted as final.

Comment 21: One comment suggested that sequence listing be exempted from the requirements of § 1.52(b)(2).

Response: The comment has been adopted. The computer readable form requirements of § 1.821(e) have not been modified and an exclusion placed in § 1.52(b)(2) for §§ 1.821–1.825.

Comment 22: The proposal to encourage the use of paragraph numbering first appeared in the Advance Notice in conjunction with the replacement paragraph concept as part of Topic 13, and was later carried forward in the Notice of Proposed Rulemaking as §§ 1.52(b)(6) and 1.121. Strenuous opposition was received to paragraph numbering as proposed where a substitute specification would be required for amendments to the specification in the absence of paragraph numbering. The proposal for paragraph numbering is viewed as burdensome and inconsistent with the requirements of other countries.

Response: The comments have been adopted in that the linkage to substitute specifications for amendments where paragraph numbering has not been utilized is dropped. Paragraph numbering has been retained as an option with no negative consequences if not utilized.

Comment 23: Some of the comments suggested identification of paragraphs under § 1.52(b)(6) by page and line number, rather than by paragraph numbering.

Response: This suggestion of requiring identification by page and line number could not be adopted and would, in fact, be unworkable as a transition into electronic filing since fixed pages do not exist in documents created on a computer. Page and line numbering are affected by font size, line spacing and formatting and can vary between different hardware and software components. Once each paragraph has been individually identified and tagged with a number, however, all future processing of the application, whether by paper or electronic version, may be done uniformly and accurately by both the Office and the applicant. For the time being, the concept of having applicants provide numbered paragraphs will be encouraged, although still optional.

Comment 24: One comment suggested that the paragraph numbering should be modified with the left digit in the first paragraph number being a ''1.''

Response: While it was not stated why use of a ''1'' would be superior to the format suggested, the rule permits applicants to use any numbering system and does not require use of the form suggested in § 1.52(b)(6).

Comment 25: One comment, in addition to opposing the proposal under § 1.52(b)(6), suggested that implementation apply only to applications filed after publication of the final rule.

Response: The suggestion is inherently incorporated in the rule, in that paragraph numbering is both optional and can only be used when an application is first filed.

Comment 26: The comments regarding § 1.52(e), which were generally supportive of the rule, were concerned with the issues of alteration of the data and future readability of the electronic media.

Response: The issue of alteration and changes to the data are of great concern to the Office. Accordingly, the only electronic media that are permitted under the rule are limited to those that cannot be changed or erased. Compact Disc-Read-Write (CD–RW) media which can be erased and rewritten are not allowed under the amended rule since they do not satisfy this concern. Another concern with CD–RW media is compatibility with existing Office hardware since older CD–ROM drives may not be able to read CD–RW media. Similarly, the Office is limiting the data format to the International Standard ISO 9660 format containing ASCII data files which is supported by all of the major computer operating systems and hardware makers. In view of the media types and data formats selected, it is expected that the authenticity and reliability of Office records should be incontrovertible well into the future.

Section 1.53: Section 1.53(c)(1) is amended to clearly provide that the cover sheet required by § 1.51(c)(1) may be an application data sheet (§ 1.76).

Section 1.53(c)(2) is amended for clarity and to refer to ''the processing fee set forth in § 1.17(q)'' for consistency with the amendment to § 1.17(q).

Section 1.53(d)(4) is amended to eliminate the reference to a ''petition'' under § 1.48 for consistency with the amendment to § 1.48. Section 1.53(d) is also amended to add a new § 1.53(d)(10) to provide a reference to § 1.103(b) for requesting a limited suspension of action in a continued prosecution application (CPA) under § 1.53(d).

Section 1.53(e)(2) is also amended to require that a petition under § 1.53(e) be accompanied by the fee set forth in § 1.17(h), regardless of whether the application is filed under §§ 1.53(b), 1.53(c), or § 1.53(d). While provisional applications filed under § 1.53(c) are not subject to examination under 35 U.S.C. 131 (35 U.S.C. 111(b)(8)), petitions under § 1.53(e) in provisional applications filed under § 1.53(c) are as

burdensome as petitions under § 1.53(e) in nonprovisional applications filed under § 1.53(b) or § 1.53(d). Therefore, it is appropriate to charge the petition fee set forth in § 1.17(h) for petitions under § 1.53(e) in applications filed under § 1.53(c), as well as for applications filed under § 1.53(b), or § 1.53(d).

Sections 1.53(f) and (g) are amended for clarity and to include a reference to ''or reissue'' in the paragraph heading to clarify that the provisions of § 1.53(f) apply to all nonprovisional applications, which include continuation, divisional, and continuation-in-part applications, as well as reissue applications and continued prosecution applications.

Section 1.53(f) is also amended to provide that if applicant does not pay one of either the basic filing fee or the processing and retention fee set forth in § 1.21(l) during the pendency of the application (rather than within one year of the mailing of a Notice to File Missing Parts of Application), the Office may dispose of the application. The former one-year period in § 1.53(f) for submitting the processing and retention fee confused applicants into believing that a continuing application could be filed anytime within that one-year period. This resulted in a lack of copendency (and the loss of benefits under 35 U.S.C. 120) when the prior application became abandoned for failure to timely reply to a Notice to File Missing Parts of Application and a ''continuing'' application was not filed until the end of the former one-year period in § 1.53(f) and after the expiration of the period for reply to the Notice to File Missing Parts of Application.

The new timeframe for submission of an application retention fee under § 1.53(f)(5) will be applicable to all applications filed on or after sixty days after the date of publication in the **Federal Register**.

Section 1.55: Section 1.55(a)(2)(iv) is amended to refer to ''the processing fee set forth in § 1.17(i)'' for consistency with the amendment to § 1.17(h) and (i). See discussion of the amendment to § 1.17.

Sections 1.55(a)(2)(i) through (iii) clarify the current Office practice concerning when the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) must be filed. Specifically, § 1.55(a)(2)(i) clarifies current Office practice. In an application filed under 35 U.S.C. 111(a), the Office requires the claim for priority and the certified copy of the foreign application to be filed before a patent is granted. Section 1.55(a)(2)(ii) clarifies current Office practice. In an application that entered the national stage of an international application after compliance with 35 U.S.C. 371, the time limits set in the PCT and the Regulations under the PCT control the time limit for making the claim for priority, while the certified copy of the foreign application must be filed before the patent is granted if the certified copy was not filed in accordance with the PCT and the Regulation under the PCT. Section 1.55(a)(2)(iii) clarifies current Office practice. The Office may require both the claim for priority and certified copy of the foreign application be filed at an earlier time than in §§ 1.55(a)(2)(i) or 1.55(a)(2)(ii) under certain enumerated circumstances.

Section 1.55(a)(2)(iv) provides that priority claims and documents may be submitted after payment of the issue fee but before the patent is granted (published), however, no further review by the Office other than placement in the application file will occur at that time.

Thus, it is now difficult for the Office to match a petition containing a priority claim or certified priority document filed after payment of the issue fee with an application file, and determine whether the applicant has met the conditions of 35 U.S.C. 119(a)–(d) to make the priority claim, before the date the application will issue as a patent. Nevertheless, it is also undesirable to prohibit applicants from filing a priority claim or certified priority document between the date the issue fee is paid and the date a patent is issued. Therefore, the Office will permit applicants to file a priority claim or certified priority document (with the processing fee set forth in § 1.17(i)) between the date the issue fee is paid and the date a patent is issued. The Office will, however, merely place such submission in the application file but will not attempt to determine whether the applicant has met the conditions of 35 U.S.C. 119(a)–(d) to make the priority claim nor include the priority claim information in the text of the patent. In such a situation, the patent will not contain the priority claim information. The patentee may request a certificate of correction under 35 U.S.C. 255 and § 1.323 and a determination of entitlement for such priority will be made after the patent is granted.

Comment 27: One comment requested that it be clarified that a claim of priority and documents filed after payment of the issue fee, but before the patent issues, will not be reviewed by the Office, and that a determination of priority entitlement will be made upon issuing a certificate of correction.

Response: The comment has been adopted and the proposed language of § 1.55(a)(2)(iv) modified.

Comment 28: Two comments have suggested that one fee of $130 rather than two fees, one under § 1.55(a) and one under § 1.323, would be more appropriate. At least the Office should propose to reduce the § 1.55(a) fee in that the Office is no longer doing a substantive review. One of the comments suggested that a procedure should be set up to issue the certificate of correction (automatically) after the patent issues based on the previously received § 1.55(a) submission (rather than require patentee to send in a subsequent request for a certificate of correction).

Response: The comments are not adopted. Applicants may of course submit a § 1.323 certificate of correction at the same time the § 1.55(a) submission is submitted, but any procedure that would have the Office automatically later treat a § 1.55(a) submission as a certificate of correction is not workable. It is unlikely that a § 1.55(a) submission would be routinely recognized as triggering a need for the Office to issue a certificate of correction. Moreover, even if such recognition initially occurred when the § 1.55(a) submission were received, the required lapse of time between the § 1.55(a) submission and whatever time after publication that the certificate of correction would then be acted upon may cause the need to issue a certificate of correction to be overlooked. Both the processing of the § 1.55(a) submission and the § 1.323 submission generate significant costs for the Office, which costs must be recovered. A single fee would not be sufficient to recover the total cost for both treatment of the § 1.55(a) submission and the issuance of the § 1.323 certificate of correction. It should be recognized that ''just placing'' a paper in a file that is in line for printing is not as simple a process as the comments would indicate. Associating the paper with the file and replacing of the file in the printing queue for the contractor requires many steps by many individuals. The actual processing of the paper represents the most significant portion of the cost of the prior review process to evaluate the priority claim.

Comment 29: One comment suggested that the proposed change would negatively impact predictability of the effective filing date of issued patents where a request for a certificate of correction is not submitted. It is believed that it is better for the Office to continue to review the claims for priority submitted after payment of the issue fee rather than shift the burden to

anyone reviewing the file history where a certificate of correction has not been requested.

Response: The comment is not adopted. Absent issuance by the Office of a certificate of correction, patentee cannot rely upon a foreign priority date. While it is true that the public would not know whether patentee will ever file a certificate of correction to obtain a priority claim (there is no time limit under § 1.323), that was also true under previous practice. Even though previous practice permitted a determination of the right to priority before issuance, a patentee could request and the Office would issue a certificate of correction after issuance (recourse via reissue to correct the lack of a priority claim pursuant to *Brenner* v. *State of Israel*, 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968) was not required).

Comment 30: Two comments suggested that the Office consider a further rule change in regard to bypass applications (continuations of international applications filed under 35 U.S.C. 111(a) and claiming benefit of the international application under 35 U.S.C. 365(c), rather than as national stage applications) that would permit the use of a photocopy of the foreign priority document that has been sent by the International Bureau to the Office as a Designated or Elected Office under the PCT. It is argued that the statute does not specify who must make the certification and that therefore the certification can be made and was in fact made when the copy of the foreign application was prepared by WIPO (rather than the certification being made by country).

Response: The comments are not adopted. The photocopy received from the International Bureau does not constitute a certified copy (it is merely a photocopy of the priority application and is not certified by WIPO), and would not satisfy the provision that a certified copy be provided in applications filed under 35 U.S.C. 111(a). 35 U.S.C. 119(b) defines how a certified copy must be made, which requires that a statement be made by the foreign intellectual property authority in which the foreign application was filed. The procedure suggested by the comment would not meet this definition. In addition, the copy of the priority application communicated by the International Bureau is placed in a folder and is not assigned a U.S. application number unless the national stage is entered. Such folders are disposed of if the national stage is not entered. Therefore, such copies may not be available if needed later in the prosecution of a continuing application. Accordingly, the priority documents in folders of international applications which have not entered the national stage may not be relied on.

Section 1.56: Section 1.56 is amended to add a new § 1.56(e) to provide that in any continuation-in-part application, the duty under § 1.56 includes the duty to disclose to the Office all information known to the person to be material to patentability which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application. Section 1.63(e) (second sentence) formerly required that the oath or declaration in a continuation-in-part application acknowledge that the duty under § 1.56 includes the duty to disclose to the Office all information known to the person to be material to patentability (as defined in § 1.56(b)) which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application. Thus, the examiner must object to an oath or declaration in a continuation-in-part that does not contain this statement. By amending § 1.56 to expressly provide that the duty under § 1.56 includes this duty, an acknowledgment of the duty of disclosure under § 1.56 is an acknowledgment of this duty in a continuation-in-part application, and an express statement to that effect in the oath or declaration will no longer be required (§ 1.63(e) is also amended by deletion of the second sentence).

Comment 31: Two comments stated that the purpose of the language, proposed to no longer be required in the § 1.63 oath/declaration, is to remind inventors who must sign the document of their duty in regard to continuation-in-part applications. The presence of such information in § 1.56 would not put on notice an inventor in the same manner as if it appeared in the oath/declaration.

Additionally, there does not appear to be more reason to add such a provision to § 1.56 since § 1.56 does not include other reminders about the duty of disclosure such as public use or sale, or, indeed, every other provision regarding a form of prior art.

Response: The comments are adopted to the limited extent indicated. Where a practitioner believes that there is an educational purpose to be served from the appearance of such language in an oath/declaration, the practitioner is free to provide the inventors an oath/declaration form that contains such language. Declarations that do not contain such an informational reminder, however, will no longer be treated as informal with a new declaration required. In view of the expressed concern that the language should be present in a declaration, the Office will continue to supply § 1.63 forms containing the language being deleted as a § 1.63(e) requirement. The Office's Standard Declaration form (PTO/SB/01) will be modified to move the continuation-in-part language relating to information that became available between the filing date of a prior application and the filing date of an instant (continuing) application from page 2 to page 1. (The current placement of the continuation-in-part language on page 2 is in a portion of the Standard Declaration form that requires completion by the applicant as to continuing data. If such portion were not completed, it is unclear whether the averment concerning continuation-in-part applications actually serves any purpose. By placing the continuation-in-part language on page 1, where it would not be dependent on completion of a portion of the form relating to continuing date, the averment will automatically be made upon execution of the form).

Section 1.58: Section 1.58(b) is specifically added to provide for placing very large tables on archival electronic media rather than in a paper specification, with the additional requirement that the information, including chemical and mathematical symbols, be positioned to maintain their intended meaning. See, for example, §§ 1.96(c) and 1.821(c). Tables convey information by the arrangement of the data in the table: rows and columns must line up. Formulae also rely on character position for their meaning. Data must be submitted under the amended rule properly positioned, in ASCII encoding, with no proprietary formats allowed. Very limited special formatting characters are found in ASCII so that it is necessary for the information to be arranged using only ASCII characters in a manner that retains the spatial arrangement of the data. The intent is that the tables and formulae will display properly when viewed with a text viewer. Great care must be exercised in preparing any such tables since any amendments to correct lost formatting may convey previously undisclosed subject matter and be considered new matter.

Section 1.59: Section 1.59(b) is amended to refer to ''the fee set forth in § 1.17(h)'' for consistency with the amendment to §§ 1.17(h) and (i). See discussion of the amendment to § 1.17.

Section 1.63: Section 1.63 is amended for clarity and simplicity. Specifically,

§ 1.63(a) is amended to provide that an oath or declaration filed under § 1.51(b)(2) as a part of a nonprovisional application must: (1) be executed (*i.e.*, signed) in accordance with either § 1.66 or § 1.68 (§ 1.63(a)(1)); (2) identify each inventor by full name (§ 1.63(a)(2)); (3) identify the country of citizenship of each inventor (§ 1.63(a)(3)); and (4) state that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought (§ 1.63(a)(4)). Section 1.63(a)(1) clarifies that there is no minimum age requirement for the person signing the oath or declaration, but rather that the person signing must be competent to understand what is being signed.

Section 1.63(b) is amended to provide that in addition to meeting the requirements of § 1.63(a), the oath or declaration must also: (1) identify the application to which it is directed; (2) state that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and (3) state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56. These requirements were formerly located at §§ 1.63(a)(2), (b)(1), and (b)(3).

Section 1.63(c) provides that an applicant may provide identifying information either in an application data sheet (§ 1.76) or in the oath or declaration. Permitting applicants to provide such identifying information in an application data sheet (rather than in the oath or declaration) should result in: (1) an increase in the use of application data sheets; and (2) a decrease in the need for supplemental oaths or declarations (providing omitted information) for applications in which an application data sheet was submitted. Note: when one of the inventors needs to update information, such as residence, the single inventor is not a party authorized by § 1.33(b) to submit a paper. The inventor may complete a new data sheet relating only to information concerning that inventor, but it must be submitted by an appropriate party according to § 1.33(b). The amendment to § 1.63(c)(1) has replaced ''post office address'' with ''mailing address'' to avoid the confusion of some applicants who do not understand that the use of ''post office address'' was intended to mean the ''mailing address'' (instead believing a post office box was required), which is seen as a plainer way of stating the requirement. The requirement for a mailing address is equivalent to the requirement for post office address, and therefore the same information supplied for the post office address may continue to be supplied for the mailing address (see also the discussion of § 1.76(a)(3)). Accordingly, information relating to where applicant normally receives mail is acceptable if identified under the prior § 1.63(a)(3) (that used the expression post office address) as the mailing address, or if identified under the current § 1.63(c)(1) (reciting mailing address) as the post office address.

Section 1.63(e) is amended to eliminate the requirement that an oath or declaration in a continuation-in-part application state that the person making the oath or declaration also acknowledge that the duty under § 1.56 includes the duty to disclose to the Office all information known to the person to be material to patentability (as defined in § 1.56(b)) which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application. See discussion of the amendment to § 1.56(e).

Comment 32: One comment appears to object to a change made in § 1.63(c)(2) (replacing ''post office address'' with ''mailing address'') and apparently wishes to have ''residence'' further defined in the rule either in terms of city, and state, or foreign country, or not required at all. It is argued that terms such as residence are confusing to inventors based on the different types of geographic areas that exist throughout the world.

Response: The comments are not adopted. The change from ''post office address'' to ''mailing address'' was made in view of many queries relating that an inventor does not have a ''post office box.'' As is recognized in the comment, residence has a variable identity depending on where one resides. It is not practical to attempt to identify the residence by rule language. Rather, the MPEP will continue to be relied upon for further definition, particularly as the Office believes it is desirable to retain a requirement that the inventor's residence be identified.

Section 1.64: Section 1.64 is amended to also refer to any supplemental oath or declaration (§ 1.67). In addition, § 1.64(b) is amended to provide that if the person making the oath or declaration is the legal representative, the oath or declaration shall state that the person is the legal representative and shall also state the citizenship (pursuant to 35 U.S.C. 115 and 117), residence and mailing address of the legal representative.

The deletion of the § 1.44 proof requirement for the legal representative of §§ 1.42 and 1.43 will be effective on the date of publication in the **Federal Register** with § 1.64 as to all pending papers under §§ 1.42 and 1.43 that have not had the proof requirement satisfied.

Section 1.67: Section 1.67(a) is amended to create §§ 1.67(a)(1) through (a)(4). Section 1.67(a) is amended to refer to § 1.162. Deficiencies or inaccuracies in an oath or declaration may be corrected by a supplemental oath or declaration identifying the entire inventive entity. The oath or declaration must be signed: by all the inventors when the correction relates to all the inventors or (§§ 1.42, 1.43, or 1.47) applicants (§ 1.67(a)(1)), or by only those inventor(s) or (§§ 1.42, 1.43, or 1.47) applicant(s) to whom the correction relates (§ 1.67(a)(2)). A deficiency or inaccuracy relating to § 1.63(c) may also be corrected with an application data sheet (paragraph (a)(3)). Note: Section 1.67(a)(4) clarifies that the party signing the supplemental oath, declaration, or application data sheet may be someone other than the party who must submit the oath, declaration, or application data sheet pursuant to § 1.33(a)(2) and (b). Only those parties identified in §§ 1.33(a)(2) and (b) are those that may submit a paper notwithstanding who may sign the paper to be submitted. See Example 5.

Example 1: An application was filed with a § 1.63 declaration executed by inventors A–C. If it is later determined that the citizenship of inventor C was in error, a supplemental declaration identifying inventors A–C may be signed by C alone correcting C's citizenship and submitted pursuant to § 1.33.

Example 2: Same as example 1, but it is later determined that the § 1.56 clause was omitted. A new declaration would be required by each of inventors A–C with each declaration identifying the entire inventive entity. If separate declarations had been executed by each of the inventors and the § 1.56 clause had been omitted only by the declaration by B, then only B would need to execute a new declaration identifying the entire inventive entity.

Example 3: An application was filed by inventors A, B, and the legal representative of deceased inventor C. It is later determined that an error was made in the citizenship of C. A supplemental declaration identifying A and B as the inventors would be required to be signed by the legal representative of C alone correcting C's citizenship and submitted pursuant to § 1.33.

Example 4: An application is filed by inventors A and B with an executed declaration. If it is later determined that an error exists in the mailing address of B, either

a supplemental declaration may be signed by B and submitted pursuant to § 1.33(b), or an application data sheet pursuant to § 1.76 containing only a change in B's mailing address may be submitted pursuant to § 1.33(a)(2) (the supplemental application data sheet need contain no more than B's name and the (new) mailing address of B.

Example 5: Inventor C (of inventors A–C) seeks to correct his/her residence and completes a supplemental application data sheet. The sheet signed only by inventor C must be submitted by all inventors (*e.g.,* signing a cover letter), or by a registered practitioner acting on behalf of all the inventors.

Section 1.67(c) is deleted as unnecessary because it simply reiterates other provisions of the patent rules of practice. If the application was altered after the oath or declaration was signed (except as permitted by § 1.52(c)), § 1.52(c) requires a supplemental oath or declaration under § 1.67. If the oath or declaration was signed in blank (while incomplete), without review thereof by the person making the oath or declaration, or without review of the specification, including the claims, the oath or declaration does not meet the requirements of § 1.63. In this situation, § 1.67(a) requires a supplemental oath or declaration.

Comment 33: Two comments requested: (1) identification of the ''deficiencies or inaccuracies'' present in an oath or declaration for which a supplemental oath or declaration may be submitted to correct, and (2) clarification as to what is intended by the language ''an applicant other than the inventor'' who may file a supplemental oath or declaration.

Response: The comments have been adopted. The language of § 1.67(a) has been amended to: (1) specify that the deficiencies or inaccuracies that may be corrected by a supplemental oath or declaration by fewer than all of the inventors are those deficiencies or inaccuracies that relate only to the inventor(s) or applicant making the supplemental oath or declaration, and (2) clarify that the applicants other than the inventor who may file a supplemental oath or declaration are applicants under §§ 1.42, 1.43, or § 1.47. The deficiencies or inaccuracies that may be corrected by the language of the supplemental oath or declaration rule include all information previously omitted or erroneously supplied by the inventors or applicants so long as all the parties to which the omission or error pertained make the supplemental oath or declaration.

Section 1.72: Section 1.72(a) is amended to state ''[u]nless the title is supplied in an application data sheet (§ 1.76)'' to clarify that the title is not requested to be a heading on the first page of the specification if supplied in an application data sheet. Section 1.72(b) is amended to provide that ''[t]he abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length'' to harmonize with PCT guidelines.

Comment 34: One comment requested that the title should still be required to be placed on the specification (rather than permitting it only in the application data sheet) so that the specification can be identified in the oath or declaration being executed by the inventors. The title on the application data sheet will not serve this important purpose.

Response: The comment is not adopted. The use of a title has never been a requirement (under the previous version of § 1.72 or the currently amended version). To the extent that practitioners feel an important identification purpose is served by supplying a title on the specification, they may continue to do so as the amended rule does not prohibit its presence on the specification even if it is supplied in the application data sheet. Section 1.77(b)(1) indicates that the title of the invention may be part of the specification whether or not it is supplied in the application data sheet of § 1.76. It should be noted that § 1.76(a) makes the application data sheet part of the application, and the presence of the title only on the application data sheet submitted with the specification can serve as an identification of the application for a later submitted oath or declaration under § 1.63.

Section 1.76: A new § 1.76 is added to provide for the voluntary inclusion of an application data sheet in provisional and nonprovisional applications. A guide to preparing an application data sheet (Patent Application Bibliographic Data Entry Format) can be found on the Office's Web site ''http:\\www.uspto.gov'' by clicking on ''Patents'' then in the ''Applications'' column, click on ''PrintEFS.'' In addition to an authorizing guide in two formats, there are also instructions for downloading the needed PrintEFS software, and frequently asked questions about this software.

Section 1.76(a) explains that: (1) an application data sheet is a sheet or set of sheets containing bibliographic data, which is arranged in a format specified by the Office; and (2) when an application data sheet is provided in a provisional or nonprovisional application, the application data sheet becomes part of the provisional or nonprovisional application. While the use of an application data sheet is optional, the Office prefers its use to help facilitate the electronic capturing of this important data. The data that is suggested to be supplied by way of an application data sheet can also be provided otherwise (and the Office is considering providing an attachment form to the application transmittal form), but it is to applicant's advantage to submit the data via an application data sheet. To help ensure that the Office can, in fact, electronically capture the data, the Office specifies a particular format to be used (but does not provide an application data sheet paper form). Electronic capture of the information from the application data sheet coupled with automated entry into Office records is quicker and more accurate than the current practice of manually extracting the information from numerous documents in the application file.

Applicants benefit from their use of application data sheets as the Office will electronically capture the data provided by application data sheets and, in return, provide applicants with more accurate filing receipts and published applications. Electronic capture of the application data sheet information by scanning occurs at the same time that the application papers are scanned during initial processing. Accordingly, for applicant to obtain the maximum benefit from use of an application data sheet, it should be submitted with the application when it is filed. Application data sheets or supplemental application data sheets submitted after the application is filed will have their information captured by operators manually keying in the information from the application data sheets or supplemental application data sheets.

Section 1.76(b) provides that bibliographic data as used in § 1.76(a) includes: (1) Applicant information; (2) correspondence information; (3) application information; (4) representative information; (5) domestic priority information; and (6) foreign priority information. Section 1.76(b) also reminds applicants that the citizenship of each inventor must be provided in the oath or declaration under § 1.63 (as is required by 35 U.S.C. 115) even if this information is provided in the application data sheet.

Applicant information includes the name, residence, mailing address, and citizenship of each applicant (§ 1.41(b)). The name of each applicant must include the family name, and at least one given name without abbreviation together with any other given name or initial. If the applicant is not an inventor, this information also includes the applicant's authority (§§ 1.42, 1.43,

and 1.47) to apply for the patent on behalf of the inventor. The recitation of ''mailing address'' reflects the replacement of ''post office address'' with ''mailing address'' in § 1.63(c). What has been previously submitted to meet the requirement for a post office address may continue to be submitted to meet the requirement for a mailing address. The change in terminology is not a change in the type of information to be supplied but is an attempt to respond to applicants' confusion thinking post office address required them to have a post office box (*see* discussion related to § 1.63(c)(1) and Response to Comment 32, above).

Correspondence information includes the correspondence address, which may be indicated by reference to a customer number, to which correspondence is to be directed (*see* § 1.33(a)).

Application information includes the title of the invention, a suggested classification by class and subclass, the Technology Center to which the subject matter of the invention is assigned, the total number of drawing sheets, a suggested drawing figure for publication (in a nonprovisional application), any docket number assigned to the application, and the type of application (*e.g.*, utility, plant, design, reissue, provisional). Application information also includes whether the application discloses any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2 of this chapter (*see* § 5.2(c)). For plant applications, application information also includes the Latin name of the genus and species of the plant claimed, as well as the variety denomination.

Although the submission of the information related to a suggested classification and Technology Center is desired for both provisional and nonprovisional applications, the Office shall not be bound to follow such information if submitted, as the Office shall continue to follow its present procedures for classifying and assigning new applications. Similarly for the suggested drawing figure, the Office may decide to print another figure on the front page of any patent issuing from the application.

Application information also includes information about provisional applications, particularly their class and subclass, and the Technology Center. The receipt by the Office of provisional applications is now up to around 70,000 per year. Provisional applications are not examined or even processed (*e.g.,* having a class and subclass assigned or being forwarded to a Technology Center). Even though provisional applications are not examined, the Technology Center and the class and subclass, if known to applicants, would be of benefit to the Office in giving an indication of where nonprovisional applications may be eventually received in the Office and their technologies so that the Office will be better able to plan for future workloads.

Section 1.76(b)(3) also requests that the plant patent applicant state the Latin name and the variety denomination for the plant claimed. The Latin name and the variety denomination of the claimed plant are usually included in the specification of the plant patent application, and will be included in any plant patent or plant patent application publication if included in an application data sheet or patent application. The Office, pursuant to the ''International Convention for the Protection of New Varieties of Plants'' (generally known by its French acronym as the UPOV convention), has been asked to compile a database of the plants patented and the database must include the Latin name and the variety denomination of each patented plant. Having this information in separate sections of the plant patent will make the process of compiling this database more efficient.

Representative information includes the registration number appointed with a power of attorney or authorization of agent in the application (preferably by reference to a customer number). Section 1.76(b)(4) states that providing this information in the application data sheet does not constitute a power of attorney or authorization of agent in the application (*see* § 1.34(b)). This is because the Office does not expect the application data sheet to be executed (signed) by the party (applicant or assignee) who may appoint a power of attorney or authorization of agent in the application.

Domestic priority information includes the application number (series code and serial number), the filing date, the status (including patent number if available), and relationship of each application for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c). Section 1.76(b)(5) states that providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120. While the patent rules of practice (§ 1.78(a)(2) or § 1.78(a)(4)) formerly required that this claim or specific reference be in the first line of the specification, the relevant patent statute is broader and only requires that a claim to the benefit of (specific reference to) a prior provisional (35 U.S.C. 119(e)(1)) or a prior nonprovisional (35 U.S.C. 120) application be in the application which is making the priority claim. Since the application data sheet, if provided, is considered part of the application, the specific reference to an earlier filed provisional or nonprovisional application in the application data sheet satisfies the ''specific reference'' requirement of 35 U.S.C. 119(e)(1) or 120, and it also complies with § 1.78(a)(2) or § 1.78(a)(4) of this part, which sections are also correspondingly revised in this final rule to accept a specific reference in an application data sheet. Thus, a specific reference does not otherwise have to be made in the specification, such as in the first line of the specification. If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the first line of the patent will be taken from the application data sheet. Section 1.76(b)(5) does not apply to provisional applications.

Foreign priority information includes the application number, country, and filing date of each foreign application for which priority is claimed, as well as any foreign application having a filing date before that of the application for which priority is claimed. Section 1.76(b)(6) states that providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and § 1.55(a). The patent statute (35 U.S.C. 119(b)) does not require that a claim to the benefit of a prior foreign application take any particular form. Section 1.76(b)(6) does not apply to provisional applications.

Section 1.76(c)(1) provides that supplemental application data sheets may be subsequently supplied prior to payment of the issue fee to either correct or update information in a previously submitted application data sheet, or an oath or declaration under §§ 1.63 or 1.67, except that inventorship changes are governed by § 1.48, correspondence changes are governed by § 1.33(a), and citizenship changes are governed by § 1.63 or § 1.67. Section 1.76(c)(2) provides that supplemental application data sheets should indicate the information that is being supplemented, and therefore they need not contain information previously supplied that has not changed. Submission of a supplemental application data sheet containing all the information previously supplied as well as new or updated information without identifying the changes would be harder for the Office to process as the supplemental application data sheets will not be scanned but captured manually.

Section 1.76(d) provides for resolution between inconsistencies between information that is supplied by both an application data sheet and the oath or declaration under §§ 1.63, or 1.67. Section 1.76(d))(1) provides that the latest submitted information will govern notwithstanding whether supplied by an application data sheet or by an oath or declaration under § 1.63, or § 1.67. Section 1.76(d)(2) provides that the information in the application data sheet will govern when the inconsistent information is supplied at the same time by a § 1.63 or § 1.67 oath or declaration. This is because the application data sheet (and not the oath or declaration) is intended as the means by which applicants will provide most information to the Office that will be captured by scanning to avoid manual input of data. The Office does not wish to check two documents (the application data sheet and the oath/declaration) for the same piece of information, or to automatically correct the data when the oath or declaration is inconsistent with the application data sheet. In the small number of instances where an oath or declaration under § 1.63 or § 1.67 has more accurate information than a concurrently supplied application data sheet (§ 1.76(d)(2)), a supplemental (corrected) application data sheet should be submitted to conform the information presented by the data sheets with the correct information in the oath or declaration (§ 1.76(d)(1)). Alternatively, an oath or declaration under §§ 1.63, 1.67 (§ 1.76(d)(1)), or a letter pursuant to § 1.33(b) can be used. (*See* also § 1.76(d)(4)), below.)

For example, if an application is filed with an application data sheet improperly identifying the residence of one of the inventors, inventor B, and an executed § 1.63 declaration setting forth the correct but different residence of inventor B, the Office will capture the residence of inventor B found in the application data sheet as the residence of B, and include it in the filing receipt. If applicant desires correction of the residence, applicant should submit a supplemental application data sheet under § 1.76(c), with the name of inventor B and the corrected residence for inventor B.

For inconsistencies between an application data sheet and an oath or declaration under § 1.63 or § 1.67 exceptions are made by reference to § 1.76(d)(3) in §§ 1.76(d)(1) and (d)(2) for the naming of inventors (§ 1.41(a)(1)) and setting forth their citizenship (35 U.S.C. 115). If different inventors are listed on the application data sheet than are named in the oath or declaration for the application, the inventors named in the oath or declaration are considered to be the inventors named in the patent application. Any change in the inventorship set forth in the oath or declaration under § 1.63 must be by way of petition under § 1.48(a) notwithstanding identification of the correct inventive entity in an application data sheet or supplemental application data sheet. Similarly, if the oath or declaration under § 1.63 incorrectly sets forth the citizenship of one of the inventors, that inventor must submit a § 1.67 supplemental oath or declaration with the correct citizenship notwithstanding the correct identification of the citizenship in an application data sheet or supplemental application data sheet.

Section 1.76(d)(4) clarifies the Office's intent to rely upon information supplied in the application data sheet over an oath or declaration even where the type of information supplied (citizenship, inventorship) is governed by the oath or declaration according to statute (35 U.S.C. 115) or other rule (§ 1.41(a)(1)). Where the oath or declaration under § 1.63 or § 1.67 contains the correct information regarding inventors or their citizenship and the application data sheet does not, even though the oath or declaration governs pursuant to § 1.76(d)(3), the information on the application data sheet must be corrected by submission of a request that the Office recapture the information and a supplemental application data sheet, or an oath or declaration under §§ 1.63 or 1.67, or a letter pursuant to § 1.33(b) showing the correct information.

For example, if an application is filed with an application data sheet correctly setting forth the citizenship of inventor B, and an executed § 1.63 declaration setting forth a different incorrect citizenship of inventor B, the Office will capture the citizenship of inventor B found in the application data sheet. Applicant, however, must submit a supplemental oath or declaration under § 1.67 by inventor B (a supplemental application data sheet or letter pursuant to § 1.33(b) cannot be used) setting forth the correct citizenship even though it appears correctly in the application data sheet. If, however, the error was one of residence, no change would be required (§ 1.76(d)(2)).

Nothing in § 1.76 is intended to change the practice in MPEP 201.03 regarding correction of a typographical or transliteration error in the spelling of an inventor's name whereby all that is required is notification of the error to the Office. Such notification should be done by filing an application data sheet or a supplemental data sheet, but may continue to be done by filing a simple statement, such as by a practitioner, and a supplemental oath or declaration is not required.

Comment 35: One comment opposed the proposal if use of the optional data sheet by the public is being motivated by the Office's plans for some future electronic program.

Response: The comment is not adopted. The driver for the optional application data sheet is the expectation that once such information is supplied in a standard format the Office will currently be able to process the data more accurately. The benefits applicants will receive by its use is not dependent upon an electronic filing or an electronic file wrapper but will accrue both in the issuance of a more accurate filing receipt, and on publication of an application with fewer errors.

Comment 36: One comment suggested that the application data sheet provide an entry option for applicant to identify the appropriate Art Unit for examination of the application and that the Office honor such identification. There is apparently some concern that the Office will attempt to minimize the granting of patent term adjustment for delays in the 14 months to first Office action or other delays by assigning applications for examination to Art Units with entirely foreign technology but small docket loads.

Response: The suggestion to include additional information in the application data sheet is adopted, although an application data sheet format requesting such information may not be available when this rule becomes effective. The application data sheet is not a (paper) form but an electronic format provided to applicants by the Office. Since Office information systems are designed for information on the application data sheet to be arranged in a certain sequence, redesigning the electronic format is more labor intensive and expensive than redoing a paper form, and a revised application data sheet electronic format, which has a place for such information, will be made available in due course. The Office will accept such information if separately provided until the revised application data sheet format is made available.

Additionally, there is a distinction between permitting applicants to aid in identification of the appropriate Art Unit to examine the application and requiring the Office to always honor such identification/request, which could lead to misuse by some applicants as a means of forum shopping. Even when an applicant's identification of an Art Unit is appropriate, internal staffing/workload requirements may

dictate that the application be handled by another Art Unit qualified to do so, particularly where the art or claims encompass the areas of expertise of more than one Art Unit.

Section 1.77: Section 1.77(a) is separated into sections 1.77(a) and 1.77(b). New § 1.77(a) lists the order of the papers in a utility patent application, including the application data sheet (*see* § 1.76). New § 1.77(b) lists the order of the sections in the specification of a utility patent application. Former § 1.77(b) is redesignated as § 1.77(c). Section 1.77(b)(4), former § 1.77(a)(6), has been amended to provide for a description of the submissions of certain parts of the application on compact discs, and their incorporation by reference.

Section 1.78: Section 1.78(a)(2) is amended to provide that the specification must contain or be amended to contain a specific reference required by 35 U.S.C. 120 in the first sentence following the title, unless the reference is included in an application data sheet.

The ability under § 1.78(a)(2) to provide the specific reference under 35 U.S.C. 120 in the application data sheet of § 1.76 and not in the first sentence of the specification is effective on the date of publication in the **Federal Register**.

Section 1.78(a)(4) is amended to provide that the specification must contain or be amended to contain a specific reference required by 35 U.S.C. 119(e)(1) in the first sentence following the title, unless the reference is included in an application data sheet. See discussion of § 1.76(b)(5). Section 1.78(a)(4) is additionally amended by deletion of the term ''copending'' as a requirement for a nonprovisional application claiming priority to a provisional application in view of the ''American Inventors Protection Act of 1999.''

Section 1.78(c) is amended for consistency with § 1.110 and for clarity.

Section 1.84: Section 1.84 had been proposed to be extensively revised to remove provisions that were not necessary for reproducible drawings, although they did set forth standards for drawings that are easy to understand. For example, § 1.84(m), shading, was proposed to be deleted because shading is encouraged, but not required for drawings that are understandable and reproducible. After careful consideration of the many comments concerning drawings, it was decided not to pursue many of the proposed amendments. Most comments explained that quality drawings are necessary for understanding of the drawings and that § 1.84 should set high standards for drawings. Accordingly, the amendments made to § 1.84 are largely either to conform with existing practice (*i.e.,* the elimination of the petition requirement for black and white photographs), or to clarify the rule (*e.g.,* color photographs must meet the requirements of both §§ 1.84(a)(2) and 1.84(b)(1)).

The resulting standards set forth in § 1.84 define conditions met by quality drawings, and applicants should be mindful of § 1.84 in submitting drawings to the Office. Applicants should submit quality drawings in order to ensure that any patent application publication or patent is printed with quality drawings. The Office's implementation of § 1.84 will include reviewing drawings to ensure that what has been submitted can be scanned and has no obvious errors, but will not include objecting to drawings merely because they could have been drawn more clearly or with more suitable views or shading.

Sections 1.84(a), (a)(2), (b)(1), and (b)(2) are amended to clarify that design applications are covered.

Section 1.84(a)(2) is amended to clarify that color drawings must be reproducible in black and white in the printed patent and that a petition (with petition fee) is required. The petition must show that color drawings are necessary for the understanding of the claimed invention.

Section 1.84(b)(1) is amended to eliminate the requirement for three copies of black and white photographs and a petition to accept such photographs. Section 1.84(b)(1) is also amended to specify that black and white photographs may be accepted where photographs are the only practical medium of illustrating the claimed invention and to give a list of examples when photographs are acceptable. For example, photographs or photomicrographs of electrophoresis gels, blots (*e.g.,* immunological, western, southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If photographs are submitted where the subject matter is capable of illustration by drawing, for example if a photograph of a syringe is submitted, the examiner may require a drawing.

Section 1.84(b)(2) is amended to clarify that both the requirements of §§ 1.84(a)(2) and 1.84(b)(1) must be met for color photographs to be acceptable.

Section 1.84(c) is amended to provide that identifying indicia should be placed on the front of drawing sheets, in the top margin.

Section 1.84(j) is amended to provide that one of the views must be suitable for publication on the cover page of the printed patent as the illustration of the invention.

Section 1.84(k) is amended to clarify that indications such as ''actual size'' or ''scale ½'' on the drawings are not permitted since these lose their meaning with reproduction in a different format.

Section 1.84(o) has been reworded for clarity.

Section 1.84(y) contains text that was previously contained in § 1.84(x).

Comment 37: Many comments were received applauding the decision of the Office to publish utility and design patents with color drawings in color. Some of these comments, however, expressed concern that the standard for accepting color drawings or color photographs was not clear.

Response: The plans to publish design and utility applications with color drawings in color will not be pursued at this time in order to allow the Office's automation efforts to focus on implementation of the eighteen-month publication provisions of the ''American Inventors Protection Act of 1999'' and filing of applications electronically.

Comment 38: Many comments were received arguing against the proposed changes to § 1.84. The comments argued that the proposed changes would make drawings harder to understand, thereby decreasing the quality of patents, make examination more difficult, and make a patent harder to defend and understand. Several noted that low standards for patent drawings would result in loss of jobs for patent illustrators. Many other comments were received supporting the proposed changes, stating that the burden to submit quality drawings should be on the applicant and not the Office, and that the technical objections made by the Office are a waste of time.

Response: Section 1.84 has largely not been amended as proposed in order to have standards for quality drawings in one place and not spread out among the rules, the MPEP, and other materials. Although the Office has explained the requirements of quality drawings in § 1.84, this does not mean that the Office will require applicant to submit the best quality drawings possible. It is in applicant's interest that the drawings be of the best possible quality. Applicants will be informed by the Office when drawings (*e.g.,* informal drawings) are not of the normal publication standard. Accordingly, enforcement of § 1.84 will be limited to insisting upon drawings that are correct and reproducible.

Section 1.85: Sections 1.85(a) through (c) are amended to remove superfluous material.

Section 1.85(a) is amended to remove the discussion of strict enforcement of § 1.84 drawing requirements. See the discussion under § 1.84.

Section 1.85(c) is amended to make the period for filing corrected or formal drawings in reply to a Notice of Allowability a nonextendable period. Extensions under §§ 1.136(a) or (b) will no longer be permitted. Thus, the time period for submitting the issue fee and any corrected or new drawings will be uniform, three months from the Notice of Allowability. Any Notice of Allowability that is mailed under the former rule permitting an extension of time under § 1.136 may be replied to after the effective date of the instant amended rule with the use of a § 1.136 extension of time.

Elimination of the § 1.85(c) (and § 1.136) extension of time for filing corrected or formal drawings applies only where a Notice of Allowability requiring the corrected or formal drawing has been mailed on or after sixty days after publication in the **Federal Register**.

The Office is taking positive steps to make it easier for applicants to submit drawings which will be approved. See § 1.84 and the change to § 1.85(a). Therefore, the instances where formal drawings will be required when the application is allowable will be reduced because more drawings will be approved as submitted.

The elimination of extensions of time, it is hoped, will encourage applicants to submit drawings that can be approved as submitted. This will not only save applicants from paying for an extension of time to correct the drawings (and cause a possible loss of patent term adjustment, 35 U.S.C. 154), but will support eighteen-month publication of applications that is also instituted by recent statutory changes.

Comment 39: Two comments supported the change to the extension of time period. A few comments opposed the change. One comment thought it premature to eliminate the extension until such time as the Office achieves a goal of four weeks to publication from payment of the issue fee. At that point the Office could implement not by a rule change but by a statement on the notice of allowability. Even then extensions for cause under § 1.136(b) should be allowed as in some instances it will be impossible to meet the three-month deadline for good reasons. No corresponding benefit was seen for the change.

Response: The need to publish application drawings as required by eighteen-month publication of applications, rather than the need to publish quickly once the issue fee is paid, is a driver for the change. This coupled with the changes to § 1.84 will help ensure that there are very few drawings that still need correction at the time of allowance. Elimination of a need for extensions of time, which may result in loss of patent term, coupled with a uniform time frame for submission of both issue fee and drawing corrections will benefit applicants.

Comment 40: One comment urged that the change should be implemented so that requirements for corrections already into extensions of time on the date that the rule goes into effect should be grandfathered in.

Response: The comment is adopted. It is intended that the change only apply to requirements for corrections issued on or after the effective date of the rule.

Section 1.91: Section 1.91(a)(3)(i) is amended to refer to ''[t]he fee set forth in § 1.17(h)'' for consistency with the changes to § 1.17(h) and § 1.17(i). See discussion of changes to § 1.17(h) and § 1.17(i).

Section 1.96: The Office indicated in the Notice of Proposed Rulemaking that the submission of computer program listings on microfiche placed a burden on applicants and the Office, and that it was considering changes to § 1.96 to permit machine readable computer program listings to be submitted on electronic media in lieu of microfiche. Section 1.96 is amended to provide for voluminous program listings containing over 300 lines of code to be submitted on archival electronic media instead of microfiche. Section 1.96(b) is amended to limit computer program listings that may be submitted as drawings or part of the specification to 300 lines or fewer, with each line comprising 72 or fewer characters.

Under § 1.96 as amended, any computer program listing may and all computer program listings over 300 lines in length (up to 72 characters per line) must be submitted as a computer program listing appendix on a compact disc pursuant to § 1.96(c) (subject to the ''transitional'' practice discussed below).

Computer program listings in compliance with former § 1.96 will be accepted until March 1, 2001. After that date, computer program listings must comply with revised § 1.96.

Section 1.96(c) is specifically amended to provide that a ''computer program listing appendix'' be submitted on a compact disc, as defined in § 1.52(e). The information submitted will be considered a ''computer program listing appendix'' (rather than a microfiche appendix). Section 1.96(c) will continue to require a reference at the beginning of the specification as itemized in § 1.77(b)(4), as amended. As with a microfiche appendix, the contents of the ''computer program listing appendix'' on a compact disc will not be printed with the published patent, but will be available from the Office on a medium to be specified by the Office. The contents of a ''computer program listing appendix'' on a compact disc may not be amended pursuant to § 1.121, but must be submitted on a substitute compact disc. Section 1.96(c) does not apply to international applications filed in the United States Receiving Office.

Section 1.96(c) provides that the availability of the computer program will be directly analogous to that of the microfiche. A compact disc appendix will be stored in the file wrapper just as microfiche appendices are currently stored. § 1.96(c)(1) it is specified that multiple program listings may be placed on a single compact disc, but a separate compact disc is required for each application.

Section 1.96(c)(2) provides that the submission requirements are specified in § 1.52(e) and adds further requirements concerning the formatting of the ''computer program listing appendix.''

Until March 1, 2001, the Office will continue to accept a computer program listing that complies with current § 1.96 provisions (*i.e.,* a computer program listing contained on ten or fewer sheets as drawings or part of the specification, or a ''computer program listing appendix'' on microfiche).

The amendments to §§ 1.96 and 1.821 *et seq.* (discussed below) for computer program listings and sequence listings will eliminate the need for submissions of hard to handle and reproduce microfiche computer program listings and voluminous paper sequence listings. To focus specifically on the Office's difficult paper handling problem, and to simplify this project so it can be deployed in a short time span, only the computer program listings, large table information, and the nucleotide and/or amino acid sequences will be accepted in machine readable format. As the Office gains experience with this new electronic medium for submission, the use of it may expand, or be subsumed into other more flexible electronic submission methods.

Relationship to Office automation plans: These changes are the initial steps toward solutions to difficult Office paper-handling problems. The Office is

planning for voluntary full electronic submission of applications and related documents by fiscal year 2001. The changes in this final rule are an initial step in that direction, permitting certain application and related material to be submitted on an acceptable archival medium.

Comment 41: The comments (almost without exception) were supportive of this proposal. Comments specifically indicated that this proposal was ''long overdue,'' and that the proposal should include provisional applications and other technologies, including chemical and manufacturing processes requiring precise computer control. The comments provided advice, including the concepts of safeguarding the information from alteration, of making the public access and examiner access easy and of assuring the submissions are readable in a nonproprietary format. The only negative comment was an expression of disbelief that the Office was equipped to handle electronic media submissions.

Response: The Office is amending § 1.96 to provide for voluminous program listings to be submitted on archival electronic media instead of microfiche.

Section 1.97: Sections 1.97(a) through (e), and (i) have been modified for purposes of grammar and consistency within the section.

Section 1.97(b)(1) has been amended to insert ''other than an application under § 1.53(d)'' to eliminate the three-month window for filing an information disclosure statement (IDS) in a continued prosecution application (CPA). Because of the streamlined processing for CPAs, it is expected that the examiner will issue an action on the merits before three months from the filing date. Under the former rule, should an examiner issue an action on the merits prior to three months from the filing date and an IDS was submitted after the Office action was mailed but within the three-month window, the examiner was required to redo the action to consider the IDS. A CPA is a continuing application, and, thus, applicant should have had ample opportunity to file an IDS. Note that § 1.103(b) now provides for a request of a three-month suspension of action upon filing of a CPA; thus, in an unusual instance where a need to file an IDS newly arises, applicant can request the three-month suspension based upon that need. In view of the above, it is appropriate to require that any IDS be filed before filing the CPA, or concurrently with the filing of the CPA.

Section 1.97(b)(1) applies to all continued prosecution applications under § 1.53(d) filed on or after 60 days from publication of this final rule in the **Federal Register**.

Section 1.97(b)(3) has been amended to delete unassociated text. The phrase ''whichever event occurs last'' appeared at the end of § 1.97(b)(3), and thus it physically appeared to apply only to § 1.97(b)(3). In reality, ''whichever event occurs last'' should be associated with each of §§ 1.97(b)(1), (b)(2), and (b)(3). Accordingly, ''whichever event occurs last'' has been deleted from § 1.97(b)(3), and ''within any one of the following time periods'' has been added in § 1.97(b). This eliminates the unassociated text ''whichever event occurs last'' from § 1.97(b)(3), while, at the same time, making it clear that the IDS will be entered if it is filed within any of the time periods of §§ 1.97(b)(1), (b)(2), (b)(3) or (b)(4).

As the filing of a RCE under § 1.114 is not the filing of an application, but merely continuation of the prosecution in the current application, § 1.97(b)(4) does not provide a three-month window for submitting an IDS after the filing of a request for continued examination.

Section 1.97(c) is amended in conformance with paragraph (b) to delete ''whichever occurs first.'' Additionally, § 1.97(c) is amended to include, in addition to a final action under § 1.113 and a notice of allowance under § 1.311, other Office actions which close prosecution in the application. This would typically occur when an Office action under *Ex parte Quayle,* 1935 Dec. Comm'r Pat. 11 (Comm'r Pat. 1935), is issued. No reason is seen for including only two of the types of actions which close prosecution (§§ 1.113, and 1.311), while not including other types.

The fee for a § 1.97(c)(2) submission has been lowered from $240 to $180, see § 1.17(p) and the discussion of the change to the fee for submissions under § 1.97(d). The new fee for § 1.97(c) IDS submissions applies to any IDS filed on or after two months from the date of publication in the **Federal Register**.

Section 1.97(d)(2) has been deleted in its entirety to remove all reference to the filing of a petition and the associated petition fee of $130. A petition unduly complicates the matter, while there is really no issue to be decided other than the entry of the IDS, and this issue of entry is ordinarily decided by the patent examiner without the need for a petition. Section 1.97(d)(2) simply requires (for an IDS submitted after the close of prosecution and before payment of the issue fee) the combination of the IDS fee (in § 1.17(p)) and the statement as is specified in § 1.97(e).

Consistent with the change to the fee required by § 1.97(c), the fee referred to in § 1.97(d) has been changed from a petition fee of $130 to a submission fee of $180, see § 1.17(p). The Office has reevaluated the processing of submissions under §§ 1.97(c) and (d) and determined that the steps and costs involved are so similar that charging different fees was not necessary. The average cost of processing the submissions was determined to be $180, which fee is required for submissions under either § 1.97(c) or § 1.97(d), see § 1.17(p). The new fee for § 1.97(d) IDS submissions applies to any IDS filed on or after two months from the date of publication in the **Federal Register**.

The material in former § 1.97(d)(3) is now in § 1.97(d)(2), in view of the deletion of former § 1.97(d)(2), and is amended to delete reference to the fee as a petition fee under § 1.17(i) and instead make reference to the fee as an IDS fee under § 1.17(p).

Section 1.97(e)(1) is amended to specify that an item first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the IDS is entitled to special consideration for entry into the record. An item first cited by a foreign patent office (for example) a year before the filing of the IDS in a communication from that foreign patent office, which item is once again cited by another foreign patent office within three months prior to the filing of the IDS in the Office, is not entitled to special consideration for entry, since applicant was aware of the item a year ago, yet did not submit that item. Similarly, a document cited in an examination report cannot support timely submission where the document was first previously cited more than three months previously in a search report from the same foreign office. The term ''a'' was replaced with the term ''any'' (in the second line of § 1.97(e)(1)) to make the distinction clear.

Section 1.97(i) is amended to delete ''filed before the grant of a patent.'' This phrase is surplusage since there can be no information disclosure statement after the grant of the patent. A submission of information items after the patent grant is a ''prior art citation'' which is made, and treated, under § 1.501. Section 1.97(i) is also amended to make it a little clearer that both §§ 1.97 and 1.98 must be complied with to obtain consideration of an IDS (by the Office), and to change § 1.97(i) plural recitation of information disclosure statements to a singular recitation, which would be in conformance with the rest of § 1.97.

Comment 42: One comment opposed the elimination of the three-month window to file an IDS in a CPA under § 1.97(b)(1) and the charging of a fee to obtain the three-month suspension of action under § 1.103. It was suggested that no fee should be charged for the suspension request, or a lower CPA filing fee should offset the suspension fee. It was felt that there is no rational basis to require applicants to pay an additional fee simply to have the CPA obtain the same benefits (*i.e.,* the ability to file an IDS without fee during the first three-month period) as a non-CPA filing, since the full application fee is already required for the CPA filing.

Response: The proposal to amend § 1.103 was not proceeded with in this final rule, but has been included in the final rule to implement request for continued examination practice (the final rule resulting from *Changes to Application Examination and Provisional Application Practice,* Interim Rule, 65 FR 14865 (March 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (April 11, 2000)). The comment has been treated in that final rule.

Comment 43: Some comments believed that the Office has not justified raising the cost for submission of an IDS under § 1.97(d) and opposed the amendment. The previous higher fee for earlier submission was intended as an inducement to submit the IDS earlier, while the lower fee for later submission existed because an applicant must be able to certify that the art cited in the IDS is being promptly made of record. A request was made for information on the percentage of time prosecution is reopened when art was considered after final determination.

Response: The comment relating to cost justification has been adopted and the cost for submission has been reevaluated. The only factor in determining IDS submission fees is cost to the Office to process the submissions. The Office has accordingly reevaluated the cost for processing both §§ 1.97(c) and (d) fees and has determined that the appropriate cost recovery fee should be the same for both and the fee amount should be $180.

Comment 44: One comment requested clarification of the amendment to § 1.97(e)(1). It was not clear whether the requirement of ''first cited'' refers to a citation by the foreign patent office that cites the information in an official action, or refers to the citation by any patent office in a counterpart application. For example, if a patent is cited in a German Office action, and it is the first time that the patent is cited in that application, but the same patent was previously cited in a Japanese counterpart application, could the item of information be cited as the first citation in a communication from the German Patent Office? Unless the German citation could be used as the first citation, the coordination of citations among a plurality of foreign applications would create a very significant administrative burden on applicants and their representatives.

Response: The comment is adopted to the extent that § 1.97(e)(1) has been amended to make clear that the German citation could not be relied upon as the first citation. The term ''a'' was replaced with the term ''any'' (as noted in the discussion under § 1.97(e)(1)). The amendment to the rule is a clarification and does not represent a change in practice. The intent of the rule is to encourage IDS disclosures as early in the prosecution as is possible and in particular before payment of the issue fee.

Comment 45: One comment noted that the change discussed in the preamble of the notice of proposed rule changes for § 1.97(i) was not reflected in the rule language portion of the notice. Section 1.97(i) was not presented in the rule language.

Response: The language representing the clarifications discussed but not presented for § 1.97(i) has been placed in the rule language.

Section 1.98: The Office has gone forward, at the present time, with only one aspect of the plan for information disclosure statement (IDS) revision that was set forth in the Advance Notice: the proposal to require that an IDS include a legible copy of each cited pending U.S. application or that portion of the application which caused it to be listed including any claims directed to that portion. The IDS rules are also being revised for consistency and grammar, and to tie up a number of loose ends, as will be discussed below.

Other than the proposed requirement for a copy of each cited U.S. application, the IDS proposals as set forth in Topics 9 and 10 of the Advance Notice were withdrawn in the Notice of Proposed Rulemaking. Accordingly, there is no proposal at this time for a statement of personal review or for a unique description as were called for in the Advance Notice, and the number of citations that may be submitted is not presently limited. The Office issued a notice of hearing and request for public comments to obtain views of the public on issues associated with the identification and consideration of prior art during patentability determinations. *See Notice of Public Hearing and Request for Comments on Issues Related to the Identification of Prior Art During the Examination of a Patent Application*, Notice of Hearing and Request for Public Comments, 64 FR 28803 (May 27, 1999), 1223 *Off. Gaz. Pat. Office* 91 (June 15, 1999). Pursuant to that notice, the Office held public hearings on June 28, 1999, and July 14, 1999, on the issues. These prior art issues are related to the changes presently being considered by the Office, independent of the instant final rule, to impose requirements/limits on IDS submissions in § 1.98 and in § 1.56. Thus, it would be premature to go forward with a comprehensive new IDS alternative until the results of the hearings and comments submitted in response to the notice have been appropriately evaluated. It is contemplated that any new IDS/§ 1.56 alternatives will be advanced in a future rulemaking.

The specifics of the current revisions to § 1.98 will now be discussed. The discussion will include the changes proposed in the Notice of Proposed Rulemaking, in addition to the application copy requirement that was also present in the Advance Notice of Proposed Rulemaking.

Sections 1.98(a) through (d) are amended for purposes of clarity.

Section 1.98(a)(2)(iii) is amended to be directed solely to a new requirement: For each pending U.S. application citation listed in an IDS, applicant must submit either a copy of the application specification, including the claims, and any drawing of the application, or as a minimum, the portion of the application which caused it to be listed, including any claims directed to the portion which caused it to be listed. The Office noted, in the Advance Notice (and in the Notice of Proposed Rulemaking), its concern that current § 1.98 does not require applicant to supply copies of U.S. application citations. It was pointed out that there is a real burden on the examiner to locate and copy one or more pending applications, thus delaying the examination of the application being examined (in which the U.S. application citation is made). Further, copying a cited pending application has the potential for interfering with the processing and examination of the cited application. This revision would, additionally, be a benefit to the public since the copy of the application would be readily available upon issuance of the application as a patent. Additionally, § 1.98(a)(2)(iv) has been added to contain some material removed by the change to § 1.98(a)(2)(iii). To the extent that the cited pending application represents proprietary information which applicant does not wish to be

publicly available once the patent issues, applicant may submit, prior to issue, a petition that it be expunged pursuant to § 1.59(b).

Sections 1.98(a)(3) and (b) were amended to create subparagraphs.

Section 1.98(b) was further amended to set forth the required identification for listed U.S. applications, to change ''shall'' to ''must,'' to require in § 1.98(b)(1) identification of the ''inventor'' rather than of the ''patentee'' (to conform to the language of § 1.98(b)(2)), and to require in § 1.98(b)(4) identification of the ''publisher.''

Section 1.98(c) was amended to move the last sentence to § 1.98(a)(3)(ii).

Section 1.98(d) provides that copies of information cited in an IDS are required to be supplied to the Office with the IDS even if such copies had been previously supplied to the Office in an IDS submission in an earlier application, unless excepted under §§ 1.98(d)(1) and (2) relating to a continuing application.

Section 1.98(d)(1) states the requirement that the prior application must be relied on for a benefit claim under 35 U.S.C. 120 and that the earlier application must be properly identified in the IDS.

Section 1.98(d)(2) states that the IDS submitted in the prior application must comply with §§ 1.98(a) through (c) as amended in this notice.

Therefore, in an IDS, filed on or after the effective date of this rule, which cites a pending U.S. application, a copy of that pending application (or the portion of the application which caused it to be listed, including any claims directed to that portion) must be submitted unless:

1. The application for which the IDS was submitted claims benefit to an earlier application under 35 U.S.C. 120 and that earlier application is properly identified in the IDS; and

2. The earlier application cites, and has a copy of, the same pending U.S. application (or the portion of the application which caused it to be listed, including any claims directed to that portion).

Example 1: Application A has an IDS statement which cites pending U.S. application X. This IDS was filed prior to the effective date of the rule change to § 1.98, and applicants did not submit a copy of pending U.S. application X (as they were not required to under former § 1.98(d)). Application B is filed as a continuing application of Application A. In Application B, applicants file an IDS after the effective date of the rule change, in which the IDS lists the same pending U.S. application (*i.e.*, application X) and refers to Application A. Applicants fail to submit a copy of pending U.S. application X with the IDS filed in Application B. The examiner will not consider pending U.S. application X during the examination of Application B since the IDS does not comply with § 1.98(a)(2)(iii). Applicants must submit a copy of pending U.S. application X in order to ensure that pending U.S. application X is considered by the examiner.

Example 2: Application C cites, and has a copy of, pending U.S. application Y. Application D is filed and claims the benefit of Application C under 35 U.S.C. 120. In Application D, applicants file an IDS, which lists the same pending U.S. application Y and refers to Application C, after the effective date of the rule change. Applicants fail to submit a copy of pending U.S. application Y. The examiner will consider pending U.S. application Y during examination of Application D, since a copy of pending U.S. application Y is not required under § 1.98(d).

This amendment to §§ 1.98(d), (d)(1), and (d)(2) is applicable to all IDS submissions filed on or after the effective date of this rule.

Comment 46: While some comments supported the amendment, others did not. It is argued that submissions of cited applications are relatively rare, and the Office's justification is based on false presumptions that the cited application file is routinely copied or that the examiner must have a copy rather than simply review the (cited) application as is done for references in a subclass. Additional arguments against the amendment are: (a) There is no guarantee that pending cited applications would be expunged from the file in which it is being cited prior to issuance of a patent, (b) it creates a significant burden to applicants and very large paper files in the PTO, (c) most pending applications will soon be available to the examiner in electronic form thus rendering the problem moot, and (d) it violates the confidentiality of 35 U.S.C. 122. It is also argued that as there is no requirement to submit a copy of an application that is cited under Cross Reference to Related Applications, there is no reason to have a different standard where the same application is cited under § 1.98. One suggestion supporting the amendment thought that applicants should be required to submit a copy of the prior art that was submitted in the cited application as well as the copy of the cited application. One comment in support of the amendment noted that the burden on applicants was minor compared to the benefit to examiners during prosecution and to the public after the application issues in obtaining papers and reducing risk of lost and misplaced papers.

Response: The comments opposing the amendment are not adopted. It is the Office's belief that it is faster access to the cited application and faster examination of the application having the cite, and not the frequency of such application citations, that is determinative. Additionally, supplying a copy of the cited application to the examiner prevents, in most cases, the need to disrupt examination of the cited application. Even where a cited application might not be copied by the examiner, if a copy of the cited application were not supplied, there would still be significant disruption to examination of the cited application, since the examiner would need to obtain the file and usually remove it so that it could be studied in the examiner's office. A cited application is more analogous, not to the totality of references in the search files that an examiner reviews on site, but to the references that the examiner removes from the search file to study further in the examiner's office. An applicant concerned with nondisclosure of the cited application has recourse to § 1.59 expungement provided that the cited application is deemed by the Office to not be material to the examination of the application in which it is cited. On balance, when weighing the burden on applicants to produce a copy versus the Office's need to examine both the application in which another application is cited and the cited application expeditiously, it is believed that the amendment is appropriate. When electronic copies of applications become available to the examiners, the issue will be reconsidered. To the extent that applicants are concerned about supplying a copy of an application cited in an IDS, applicants may refer to the ''cited'' application in the specification of the ''examined'' application, rather than by IDS submission and would then not need to supply a copy of the referred to application; however, the Office does not review an application referred to in the specification in the same light as it does a specific IDS citation of the application with a copy supplied. For example, references in the specification may only be for purposes of supplying background information as opposed to utilizing an IDS to comply with a duty of disclosure under § 1.56.

Comment 47: One comment opposed the requirement in § 1.98(b)(2) that each listed U.S. application be identified by the inventor, application number, and filing date, as such information can be easily obtained from PALM. It was suggested that the first named inventor or identification number be used.

Response: The comment is not adopted. The burden to supply the required information is slight, and there is no need to require examiners to look the information up under PALM. Additionally, if only one piece of

information is supplied, *e.g.*, application number, any error in the information would significantly delay identification of the application being cited.

Comment 48: One comment suggested that the change to § 1.98(d) adds a great deal of complexity for very little benefit, particularly as the examiners should be considering the prosecution history, which is independent of whether the IDS in the prior application complied with § 1.97. Additionally, there is no justification to apply § 1.98(d)(2) retroactively.

Response: The comment has been adopted. The proposed required compliance with § 1.97 for the IDS in the prior application has not been carried forward in the final rule. It is also the intent of the Office, as stated in the preamble to the instant final rule, not to apply § 1.98(d)(2) retroactively.

Section 1.102: Section 1.102(d) is amended to refer to ''the fee set forth in § 1.17(h)'' for consistency with the changes to §§ 1.17(h) and 1.17(i). See discussion of changes to §§ 1.17(h) and 1.17(i).

Section 1.103: The proposal to amend § 1.103 was not proceeded with in this final rule, but has been included in the final rule to implement request for continued examination practice (the final rule resulting from *Changes to Application Examination and Provisional Application Practice*, Interim Rule, 65 FR 14865 (March 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (April 11, 2000)). The comments on the proposed amendment to § 1.103 have been treated in that final rule.

Section 1.104: Section 1.104(a)(2) (second sentence) is amended to add the phrase ''in an Office action'' to provide basis for the phrase ''Office action'' in §§ 1.111(a), (b), and 1.115(a).

Section 1.104(e) has been revised by deleting the last sentence thereof. The last sentence previously stated:

> Failure to file such a statement does not give rise to any implication that the applicant or patent owner agrees with or acquiesces in the reasoning of the examiner.

This statement of the rule is inconsistent with recent decisions by the United States Supreme Court (Supreme Court) and the United States Court of Appeals for the Federal Circuit (Federal Circuit), which highlight the crucial role a prosecution history plays in determining the validity and scope of a patent. *See e.g., Warner-Jenkinson Co.* v. *Hilton Davis Chem. Co.*, 520 U.S. 17, 41 USPQ2d 1865 (1997); *Markman* v. *Westview Instruments*, 52 F.3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), aff'd 517 U.S. 320, 38 USPQ2d 1461 (1996); *Vitronics Corp.* v. *Conceptronic Inc.*, 90 F.3d 1576, 39 USPQ2d 1573 (Fed. Cir. 1996). The examiner's statement of reasons for allowance is an important source of prosecution file history. See for example *Zenith Labs., Inc.* v. *Bristol-Myers Squibb Co.*, 19 F.3d 1418, 30 USPQ2d 1285 (Fed. Cir. 1996), which references MPEP 1302.14 to this effect (Footnote 7 of the case).

In view of the recent case law dealing with prosecution history, the failure of an applicant to comment on damaging reasons for allowance would give rise to a presumption of acquiescence to those reasons, and the negative inferences that flow therefrom. Accordingly, the statement in the rule that failure to file comments on reasons for allowance does not give rise to any implication that an applicant (or patent owner) agrees with or acquiesces in the reasoning of the examiner is obsolete and out of step with recent case law. The deletion of this statement from the rule should require applicant to set forth his or her position in the file if he or she disagrees with the examiner's reasons for allowance, or be subject to inferences or presumptions to be determined on a case-by-case basis by a court reviewing the patent, the Office examining the patent in a reissue or reexamination proceeding, the Board of Patent Appeals and Interferences reviewing the patent in an interference proceeding, *etc.*

That the examiner does not respond to a statement by the applicant commenting on reasons for allowance does not mean that the examiner agrees with or acquiesces in the reasoning of such statement. While the Office may review and comment upon such a submission, the Office has no obligation to do so.

This revision of § 1.104(e) does not provide any new policy, but rather tracks the state of the case law established in the decisions of the Supreme Court and the Federal Circuit.

Section 1.105: Section 1.105 is a new section containing §§ 1.105(a) through (c), relating to requirements by the Office that certain information be supplied.

Section 1.105(a)(1) provides examiners or other Office employees explicit authority to require submission, from individuals identified under § 1.56(c) or any assignee, of such information as may be reasonably necessary for the Office to properly examine or treat a matter being addressed in an application filed under 35 U.S.C. 111 or 371, in a patent, or in a reexamination proceeding. The examples given that contain specific references in §§ 1.105(a)(1)(i), (iii), and (vii) to inventors, and in § 1.105(a)(2) to assignees who have exercised their right to prosecute under § 3.71 are not intended to limit the scope of general applicability for all individuals identified in § 1.56(c). Abandoned applications also fall within the scope of the rule to provide for handling of petition matters. New § 1.105 is simply an explicit recitation of inherent authority that exists pursuant to 35 U.S.C. 131 and 132, and continues the practice of providing explicit authority to Office employees as was done with the Board of Patent Appeals and Interferences under § 1.196(d) and with trademark examiners under § 2.61.

The explicit authority of the examiner under § 1.105 to require such information as may be reasonably necessary to properly examine an application or treat a matter therein will be effective for any Office action written on or after the date that is sixty days after the date of publication in the **Federal Register**.

The inherent authority of the Office to require applicants to reply to requirements for information under 35 U.S.C. 131 and 132 was made explicit in § 1.105(a)(1) to *encourage* its use by Office employees so that the Office can perform the best quality examination possible. The authority is not intended to be used by examiners without a reasonable basis, but to address legitimate concerns that may arise during the examination of an application or consideration of some matter.

Sections 1.105(a)(1)(i) through (a)(1)(vii) identify examples of the types of information that may be required to be submitted. Section 1.105(a)(1)(i) relates to the existence of any particularly relevant commercial database known to any of the inventors that could be searched for a particular aspect of the invention. Section 1.105(a)(1)(ii) relates to whether a search was made, and if so, what was searched. Section 1.105(a)(1)(iii) relates to a copy of any non-patent literature, published application, or patent (U.S. or foreign), by any of the inventors, that relates to the claimed invention. Section 1.105(a)(1)(iv) relates to a copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used to draft the application. Section 1.105(a)(1)(v) relates to a copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used in the invention process, such as by designing around or providing a solution to accomplish an invention result. Section 1.105(a)(1)(vi) relates to identification of improvements. Section 1.105(a)(1)(vii)

relates to uses of the claimed invention known to any of the inventors at the time the application is filed notwithstanding the date of the use. Knowing a particular use/application of an invention may be helpful in determining a field of search for the invention.

Other examples where the Office may require the submission of information are:

(1) A reply to a matter raised in a protest under § 1.291;

(2) An explanation of technical material in a publication, such as one of the inventor's publications;

(3) The identification of changes made in a reformatted continuing application filed under § 1.53(b);

(4) A mark-up for a continuation-in-part application showing the new matter where there is an intervening reference;

(5) Comments on a new decision by the Federal Circuit that appears on point;

(6) The publication date of an undated document mentioned by applicant which may qualify as printed publication prior art (35 U.S.C. 102(a) or (b)); or

(7) Information of record which raises a question of whether applicant derived the invention from another under 35 U.S.C. 102(f).

The Office intends to provide training for its employees on the appropriate use of § 1.105. Any abuse in implementation of the authority, such as a requirement for information that is not in fact reasonably necessary to properly examine the application, may be addressed by way of petition under § 1.181.

Section 1.105 does not change current Office practice in regard to questions of fraud under § 1.56, and inquiries from examiners relating thereto are not authorized. *See MPEP 2010.*

Section 1.105(a)(2) provides that where an assignee has asserted its right to prosecute an application pursuant to § 3.71(a), matters such as §§ 1.105(a)(1)(i), (iii), and (vii) that especially relate to the inventors may also be applied to the assignee. It is also contemplated that these paragraphs may be applied to other individuals identified by § 1.56(c).

Section 1.105(a)(3) provides a safety net by specifically recognizing that where the information required to be submitted is unknown and/or is not readily available, a complete reply to the requirement for information would be a statement to that effect. There would be no requirement for a showing that in fact the information was unknown or not readily available such as by way of disclosing what was done to attempt to satisfy the requirement for information. Nonetheless, it should be understood that a good faith attempt must be made to obtain the information and a reasonable inquiry made once the information is requested even though the Office will not look behind the answer that the information required to be submitted is unknown and/or is not readily available. An Office employee should not continue to question the scope of a specific answer merely because it is not as complete as the Office employee desires. (See Example below.)

Example: In a first action on the merits of an application with an effective filing date of May 1, 1999, the examiner notes the submission of a protest under § 1.291 relating to a public sale of the subject matter of the invention and requests a date of publication for a business circular authored by the assignee of the invention, which circular was submitted with the protest. It is expected that the attempt to reply to the requirement for information would involve contacting the assignee who would then make a good faith attempt to determine the publication date of the circular. The reply to the requirement states that the publication date of the circular is ''around May 1, 1998.'' As ''around May 1, 1998'' covers dates both prior and subsequent to May 1, 1998, a *prima facie* case under 35 U.S.C. 102(b) would not exist. The examiner cannot require that the reply be more specific or hold the reply to be incomplete based on such information. The examiner can, however, in the next Office action seek confirmation that this is the most specific date that was obtained or can be obtained based on a reasonable inquiry being made if that is not already clear from the reply to the initial requirement for information.

Section 1.105(b) provides that the requirement for information may be included in an Office action, which includes a restriction requirement if appropriate, or can be sent as a separate letter independent of an Office action on the merits, such as when the information required is critical to an issue or issues that need to be addressed in a subsequent Office action. Each Technology Center can determine how best to implement the section. For example, a Technology Center having certain technologies where pertinent prior art is highly likely to be found in a commercial data base may choose to implement § 1.105(a)(1)(i) routinely for those technologies, sending out requirements for information either when such applications are first forwarded to the Technology Center, or at the time they are assigned to an examiner.

Section 1.105(c) provides that a reply to a requirement for information or failure to reply is governed by §§ 1.135 and 1.136. Note the Example provided in the discussion of § 1.105(a)(2).

Comment 49: Several comments either oppose or strongly oppose the rule. Three comments argue that the Office is without statutory basis to support the rule and in fact violates 35 U.S.C. 103(a) (patentability shall not be negatived by the manner in which the invention was made), while two others argue that there is no need for the rule in view of the Office's inherent authority. All the comments opposing the rule argue that the rule imposes an unreasonable burden on the applicants. One comment argues that the rule imposes an unreasonable burden on the examiners to prepare the request. Objections to the rule include:

(1) It will slow the examination process where applicant is required to reply;

(2) It sets a standard of ''reasonably necessary'' that is new and different from the materiality standard in § 1.56;

(3) The information may be protected by attorney-client privilege;

(4) The information may be voluminous;

(5) It may be difficult to make a good faith search when large corporate teams or foreign entities are involved;

(6) New issues are created in subsequent litigation as to whether a good faith search was made and whether the duty of candor was complied with, particularly if the reply was that the information is unknown or not available; and

(7) It may be used to shift the burden of examination from the examiner to the applicant.

There was also a concern that the Office did not address any mechanism to assure a uniform policy among the 3,000 examiners.

Response: The comments objecting to the new rule are not adopted. The Office will, however, actively work toward ensuring that examiners apply the rule uniformly and fairly, and the Office will provide a petition remedy to achieve those purposes. As to the specific burdens that the rule is said to create, it must be kept in mind that the rule is aimed at resolving an issue that is reasonably necessary for the examiner to resolve for the proper examination of the application. The requirement for information under § 1.105 thus cannot be avoided in our system of examination (as opposed to registration) and would have been made under the Office's inherent authority. Accordingly, the authority set forth in the rule is not contrary to statute. The rule is propounded not to create a new cause celebre among the bar but to encourage examiners to do the best examination

possible. Implementation of the rule is no different than what other parts of the examination process create when rejections and objections are made to which applicants must reply. Each of the claimed ill effects of § 1.105 can be equally charged against the normal examination process where a requirement under § 1.105 is not an issue.

As to fears that examiners will use such authority as a fishing expedition or a tool of harassment causing applicants extensive expenses to either attempt to comply or challenge the need for the information, as noted above, the Office will in its implementation of the rule work hard to minimize such problems. The Office recognizes that with a large examining staff there are bound to be a small number of cases that need corrective action, and the Office will be sensitive to that. The Office, however, cannot hold itself hostage to fears that a few of these situations will arise and force examination to the lowest common denominator by not permitting examiners to resolve issues that are reasonably necessary to be resolved for a quality examination.

Comment 50: One comment suggested that any Requirement for Information first be reviewed by an SPE or Director in the Technology Center before being sent.

Response: As the Office moves to implement § 1.105 the comment will be evaluated to study its feasibility.

Section 1.111: The heading of § 1.111 is amended to clarify that it applies to a reply by the applicant or patent owner to a non-final Office action.

Section 1.111 is amended to divide former § 1.111(a) into §§ 1.111(a)(1) and (a)(2). Section 1.111(a)(1) is amended to: (1) Provide a reference to § 1.104 concerning the first examination of an application; and (2) move the reference of §§ 1.135 and 1.136 (for time for reply to avoid abandonment) from § 1.111(c) to § 1.111(a).

Section 1.111(a)(2) is amended to provide that a second (or subsequent) supplemental reply will be entered unless disapproved by the Commissioner, and that disapproval may occur if the second (or subsequent) supplemental reply unduly interferes with an Office action being prepared in response to the previous reply. Factors that will be considered in disapproving a second (or subsequent) supplemental reply include: The state of preparation of the Office action responsive to the previous reply as of the date of receipt by the Office (§ 1.6) of the second (or subsequent) supplemental reply (§ 1.111(a)(2)(i)); and the nature of any changes to the specification or claims that would result from entry of the second (or subsequent) supplemental reply (§ 1.111(a)(2)(ii)).

Disapproval of a second or subsequent reply applies to replies filed on or after two months from the date of publication in the **Federal Register**.

Disapproval of a second (or subsequent) supplemental reply will be delegated to the appropriate Technology Center Group Director under MPEP 1002.02(c). As most supplemental replies cause only a minor inconvenience to the Office, the Office is not inclined to adopt a change that would preclude the ability to file a second (or subsequent) supplemental reply when such is warranted. There are, however, some applicants who routinely file supplemental (or preliminary, see § 1.115) replies that place a significant burden on the Office by: (1) Canceling the pending claims and adding many new claims; (2) adding numerous new claims; or (3) being filed approximately two months from the date the original reply was filed (*i.e.*, when the examiner is likely to be preparing an Office action responsive to the original reply). These applicants also tend to be those having many applications simultaneously on file in the Office. These actions are calculated to interfere with the timely examination of an application and can be particularly detrimental to the Office.

The provision that the entry of a second (or subsequent) supplemental reply may be disapproved by the Commissioner (or his or her delegate) gives the Office the latitude to permit entry of those second (or subsequent) supplemental replies that do not unduly interfere with the preparation of an Office action, but also gives the Office the latitude to refuse entry of those second (or subsequent) replies that do unduly interfere with the preparation of an Office action. Factors that will be taken into consideration when deciding whether to disapprove entry of such a second (or subsequent) supplemental reply include: (1) The state of preparation of an Office action responsive to the initial or previous reply as of the date of receipt (§ 1.6, which does not include § 1.8 certificate of mailing dates) of the second (or subsequent) supplemental reply by the Office; and (2) the nature of the change to the specification or claims that would result from entry of the second (or subsequent) supplemental reply. That is, if the examiner has devoted a significant amount of time to preparing an Office action before such a second (or subsequent) supplemental amendment is received, and the nature of the change to the specification or claims that would result from entry of the second (or subsequent) supplemental reply would require significant additional time (see examples below), it is appropriate for the Office to disapprove entry of the second (or subsequent) supplemental reply.

Example 1: If the second (or subsequent) supplemental reply amends the pending claims, adds numerous new claims, or amends the specification to change the scope of the claims, which the reply requires the examiner to devote significant additional time to prepare the Office action, the entry of such supplemental reply may be appropriately disapproved when the examiner has devoted a significant amount of time to preparing an Office action before such reply is received.

Example 2: If the second (or subsequent) supplemental reply amends the specification so that a new matter issue is raised, the entry of such reply may be appropriately disapproved when the examiner has devoted a significant amount of time to preparing an Office action before such reply is received.

Both conditions in § 1.111(a)(2) must be met, although it is not intended that the amount of time required to address the changes amount to the same period of time already spent by the examiner in preparing the initial response. Where a second (or subsequent) supplemental amendment merely cancels claims (as opposed to canceling claims and adding claims, or simply adding claims)(see below for additional examples), it is not appropriate to disapprove entry of such a second (or subsequent) supplemental amendment even if the examiner has devoted a significant amount of time to preparing an Office action before such a second (or subsequent) supplemental amendment is filed.

Example 3: If the second (or subsequent) supplemental reply amends the pending claims to alleviate rejections under 35 U.S.C. 112, ¶ 2, it would not be appropriate to disapprove the entry of such reply under § 1.111(a)(2).

Example 4: If the second (or subsequent) supplemental reply includes only changes that were previously suggested by the examiner, it may not be appropriate to disapprove the entry of such reply under § 1.111(a)(2).

Obviously, if a supplemental reply is received in the Office (§ 1.6) after the mail date of the Office action responsive to the original (or supplemental) reply, and it is not responsive to that Office action, the Office will continue the current practice of not mailing a new Office action responsive to that supplemental reply, but simply advising the applicant that the supplemental reply is nonresponsive to such Office action and that a responsive reply (under § 1.111 or § 1.113 as the situation may be) must be timely filed to avoid

abandonment. Put simply, the mailing of an Office action responsive to the original (or supplemental) reply will cut off the applicant's right to have any later-filed supplemental reply considered by the Office.

Comment 51: The proposal was widely opposed. Supplemental filings are felt to speed prosecution and remove issues. Disapproving entry will cause unnecessary work and a repeat of the filing. It was suggested that a handling fee be imposed rather than disapproving entry. The proposal places an additional administrative burden on examiners and Technology Center Group Directors in deciding appropriateness of disapproving entry.

Response: The amendment is believed to strike a reasonable balance between permitting an unlimited number of supplemental replies to be filed: (1) prior to preparation of an Office action by the examiner, and (2) after preparation of an Office action by the examiner (that is not yet mailed) that do not require a significant amount of rework versus disapproval of second or subsequent replies that unduly interfere with the preparation of an Office action. The imposition of a handling fee would not prevent this type of abuse.

Comment 52: It was argued that it is fundamentally unfair to evaluate the amount of time an examiner has spent preparing an Office action as of the date the second (or subsequent) supplemental reply is matched with the file as was initially proposed. Applicants should not be punished because of paper handling problems in the Office.

Response: The comment has been adopted. The rule now reflects that the amount of preparation time devoted to an Office action will be evaluated as of the date of receipt by the Office of the second (or subsequent) supplemental reply.

Comment 53: Clarification was requested as to whether a second * * *supplemental reply is the third reply or the second reply.

Response: The expression ''second * * * supplemental reply'' is seen to clearly state that only a third (or subsequent) reply will be subject to disapproval.

Comment 54: One comment suggested that the rule should set forth a standard for disapproval.

Response: The comment is adopted. The rule as proposed set forth only that second or subsequent replies will be entered unless disapproved. The rule language has been modified to recite the factors that will be used; that is, the state of preparation of the Office action, and the nature of the changes.

Comment 55: One comment objected to the paragraph (a) amendment where the language was changed from ''must reply thereto and *may* request reconsideration'' (underlining added) to ''must reply thereto and request reconsideration.'' It is urged that the Office should treat the filing of a reply as an implicit request for reconsideration rather than require a separate explicit statement and the Office should include language to that effect in the rule.

Response: The language change is not considered to be a change in practice but a clarification. Replies that appear to be requests for reconsideration are treated as such whether or not there is a specific statement requesting reconsideration. There are, however, some replies that state that they are in response to an Office action, but they do not in fact represent a request for reconsideration and are not treated as such. For example, the Office has experienced replies that amount to incoherent ramblings that reply to an Office action but provide no means for an examiner to determine upon what basis reconsideration is being requested or that reconsideration is being requested for any particular ground of rejection or objection, and the reply will not be treated as a request for reconsideration.

Section 1.112: Section 1.112 is amended to provide a reference to § 1.104 concerning the first examination of an application. Section 1.112 is also amended to add the phrase ''or an appeal (§ 1.191) has been taken'' to the last sentence. This addition is to clarify that once an appeal has been taken in an application, any amendment is subject to the provisions of §§ 1.116(b) and (c), even if the appeal is in reply to a non-final Office action.

Section 1.115: Section 1.115(a) provides that a preliminary amendment is an amendment that is received in the Office (§ 1.6) on or before the mail date of the first Office action under § 1.104. That is, an amendment received in the Office (§ 1.6) after the mail date of the first Office action is not a preliminary amendment, even if it is nonresponsive to the first Office action and seeks to amend the application prior to the first examination.

Section 1.115(b)(1) provides that a preliminary amendment will be entered unless disapproved by the Commissioner, and that disapproval may occur if the preliminary amendment unduly interferes with the preparation of a first Office action in an application. Factors that will be considered in disapproving a preliminary amendment include: the state of preparation of a first Office action as of the date of receipt (§ 1.6, which does not include § 1.8 certificate of mailing dates) of the preliminary amendment by the Office (paragraph (b)(1)(i)); and the nature of any changes to the specification or claims that would result from entry of the preliminary amendment (paragraph (b)(1)(ii)). See the discussion for § 1.111(a)(2).

Disapproval of a preliminary amendment applies to applications (not amendments) filed on or after two months from the date of publication in the **Federal Register**.

Section 1.115(b)(2) provides that a preliminary amendment will not be disapproved if it is filed no later than: (1) three months from the filing date of an application under § 1.53(b); (2) the filing date of a continued prosecution application under § 1.53(d); or (3) three months from the date the national stage is entered as set forth in § 1.491 in an international application. Thus, the entry of a preliminary amendment will not be disapproved under § 1.115(b)(1) if it is filed within one of the periods specified in §§ 1.115(b)(2)(i) through (iii). Nevertheless, if a ''preliminary'' amendment is filed after the mail date of the first Office action, it is not a preliminary amendment under § 1.115(a). If a (''preliminary'') amendment is received in the Office (§ 1.6) after the mail date of the first Office action and is not responsive to the first Office action, the Office will continue the current practice of not mailing a new Office action responsive to that amendment, but simply advising the applicant that the amendment is nonresponsive to the first Office action and that a responsive reply must be timely filed to avoid abandonment. Put simply, the mailing of the first Office action will continue to cut off the applicant's right to have any later-filed preliminary amendment considered by the Office, even if that amendment is filed within the time periods specified in § 1.115(b). See also § 1.111.

Section 1.115(c) provides that the time periods specified in § 1.115(b)(2) are not extendable.

It is expected that disapproval of a preliminary amendment filed outside the period specified in § 1.115(b)(2) will be delegated to the appropriate Technology Center Group Director under MPEP 1002.02(c). The provision that the entry of a preliminary amendment filed outside the period specified in § 1.115(b)(2) may be disapproved by the Commissioner gives the Office the latitude to permit entry of those preliminary amendments filed outside the period specified in § 1.115(b)(2) that do not unduly

interfere with the preparation of an Office action, but also gives the Office the latitude to refuse entry of those preliminary amendments filed outside the period specified in § 1.115(b)(2) that do unduly interfere with the preparation of an Office action.

In an application filed under 35 U.S.C. 111(a) and § 1.53(b) or a PCT international application entering the national stage under § 1.491, the time periods specified in § 1.115(b)(2) should give the applicant time between the mailing of a filing receipt and the mailing of a first Office action to file any necessary preliminary amendment. CPA practice under § 1.53(d), however, is designed to provide a first Office action sooner than if the application had been filed as a continuation under § 1.53(b) (or under former § 1.60 or § 1.62). *See Continued Prosecution Application (CPA) Practice*, Notice, 1214 *Off. Gaz. Pat. Office* 32, 32 (September 8, 1998). An applicant filing a CPA under § 1.53(d) who needs time to prepare a preliminary amendment should file a request for suspension of action under § 1.103(b) with the CPA request.

Comment 56: The proposal was widely opposed.

Response: See the responses to comments relating to § 1.111.

Comment 57: It is believed that there is adequate incentive at present for filing preliminary amendments as soon as possible after filing of the application.

Response: Obviously if an applicant wishes an early action on the merits for a newly filed application, submission of a preliminary amendment around the time the application is to be taken up for action is not advisable. The Office has noticed, however, that certain applicants routinely submit preliminary amendments that, due to submission times and content, cause undue delays in the issuance of a first Office action and cause the Office to needlessly expend its resources, which also affects the preparation of Office actions for other applicants.

Comment 58: It is suggested that a one-month grace period for submission of a preliminary amendment be provided for a CPA or that applicants be permitted to grant themselves extensions of time.

Response: The suggestions were not adopted. The purpose of CPA filing is for a speedy first action. Section 1.103 has been amended for applicants to request up to a three-month suspension of a first Office action to permit the filing of a preliminary amendment. The ability for applicants to grant themselves extensions of time would further aggravate the problem of examiners preparing Office actions that would then have to be redone, or require the Office to hold off on examining an application until it could be determined whether an extension had been applied for.

Section 1.121: The title to § 1.121 has been amended to add ''in applications'' to reinforce the fact that the section is limited to making amendments in applications, and it does not apply to making amendments in reexamination proceedings. The reference in § 1.121(i) to reexamination proceedings is only an advisory reference to look to § 1.530.

Section 1.121 is amended to change the manner of making amendments in non-reissue applications. Section 1.121 is also completely rewritten and reformatted to make it easier to understand. The new amendment practice, wherein amendments to the specification must be made by the submission of clean new or replacement paragraph(s), section(s), specification, or claim(s) will essentially eliminate (1) the need for the Office to enter changes to the text of application portions by handwriting in red ink, and (2) the presence of hard to scan brackets and underlining in amended claims. This will provide a specification (including claims) in clean, or substantially clean, form that can be effectively captured and converted by optical character recognition (OCR) scanning during the patent publishing process. The new practice also requires the applicant to provide a marked up version of the changed specification, section(s) of specification, paragraph(s), or claim(s), using applicant's choice of a marking system to indicate the changes, which will aid the examiner in identifying the changes that have been made. The marked up version must be based on the previous version and indicate (by markings) how the previous version has been modified to produce the clean replacement paragraph(s), section(s), specification, or claim(s) submitted in the current amendment. The term ''previous version'' means the version of record in the application as originally filed or from a previously entered amendment. Applicants will also be able to submit a clean set of all pending claims. This will also be helpful during the patent printing process, and should lead to reduced printing errors in claims in patents.

Amendments in compliance with former § 1.121 will be accepted until March 1, 2001. After that date, amendments must comply with revised § 1.121. It is the intent of the Office to send out reminders of the new manner of making amendments prior to March 1, 2001, in the form of flyers along with correspondence to applicants.

The change to § 1.121 involves concurrent changes to § 1.52(b) (see discussion of § 1.52(b)(6)), which provides for the option of numbering paragraphs of the specification, except for the claims. If the paragraphs of the specification are numbered as provided for in § 1.52, applicant will be able to amend the specification by merely submitting a replacement paragraph with the same number containing the desired changes in the replacement paragraph.

As discussed above, the changes to § 1.121 will result in relatively clean (*e.g.*, without underlining, bracketing, or red ink) application specifications, including claims, that can be effectively OCR scanned as part of the printing process in the Office of Patent Publications, which, in turn, will result in a higher quality of printed patents. Clean application specifications, including claims, can more easily and accurately be scanned and converted into readable text by OCR in the patent printing process. While text marked with underlining and bracketing can be scanned, extra processing is required to delete the brackets, the text within the brackets, and to correct misreading of letters caused by the underlining. Thus, using clean replacement sections, or paragraphs, and claims will permit complete OCR scanning that is a faster and more accurate method of capturing the application for printing while eliminating an extensive amount of key-entry of subject matter. This will result in patents with fewer errors in need of correction by certificate of correction, which will be a clear benefit to patentees and also conserve Office resources.

In addition to submitting a replacement section, or paragraph, or claim to make an amendment, applicant is required to submit a marked up version of the section, or paragraph, or claim to show the differences between the replacement and either the original or the most recently filed and entered version immediately prior to the amendment. The marked up version may be created by any automated or manually entered method applicant chooses, such as underlining and bracketing, redlining, or by any system designed to provide text comparison. Where a paragraph or a claim has been added or deleted, a marked up version is not required. If a marked up version is otherwise supplied, however, any added or deleted paragraph or claim should be identified with a statement, such as, ''The paragraph beginning at page 6, line 3, has been deleted.'' The

size of the marked up version, and the burden associated with its preparation, will be minimized, while still retaining the requirement to show changes involving any paragraph or claim that would otherwise be difficult to ascertain.

Section 1.121(b) now provides for amending application specifications by replacing §§ 1.121(a)(1) through (a)(6) of the former rule with new §§ 1.121(b) through (g), which treat the manner of making amendments in applications other than reissue applications. Section 1.121(h) relates to amendments in reissue applications, and it references § 1.173, where the provisions for making amendments in reissue applications have been transferred from former paragraph (b) of this section. Section 1.121(i) relates to amendments in reexamination proceedings and it references § 1.530, a reference to § 1.530(d) being in former § 1.121(c). Section 1.121(j) provides for amendments made in provisional applications.

Section 1.121(b)(1) provides procedures to delete, replace, or add a paragraph to the specification of an application. Section 1.121(b)(1) does not apply to amendments to materials submitted under §§ 1.96 and 1.825. § 1.121(b)(1)(i) requires an instruction to unambiguously identify the location of the amendment. If a paragraph is to be replaced by one or more paragraphs, the instruction should unambiguously identify the paragraph to be replaced either by paragraph number, page and line, or any other unambiguous method, and be accompanied by the replacement paragraph(s) in clean form.

Where paragraph numbering has been included in an application as provided in § 1.52(b)(6), applicants can easily refer to a specific paragraph by number when presenting an amendment. If a numbered paragraph is to be replaced by a single paragraph, the added replacement paragraph should be numbered with the same number as the paragraph being replaced. Where more than one paragraph is to replace a single original paragraph, the added paragraphs should be numbered using the number of the original paragraph for the first replacement paragraph, followed by increasing decimal numbers for the second and subsequent added paragraphs, *i.e.*, original paragraph [0071] has been replaced with paragraphs [0071], [0071.1], and [0071.2]. If a numbered paragraph is deleted, the numbering of subsequent paragraphs should remain unchanged.

Section 1.121(b)(1)(ii) requires that the replacement or added paragraph(s) be in clean form. This means that the added or replacement paragraph(s) must not include any markings to indicate the changes that have been made. Section 1.121(b)(1)(iii) requires a separate version of the replacement paragraph(s) to accompany the amendment. The separate version must include each replacement paragraph with markings to show the changes relative to the previous version as an aid to the examiner. A marked up version, however, does not have to be supplied for any added paragraph(s) or any deleted paragraph(s), as it is sufficient to merely indicate or identify any paragraph which has been added or deleted.

Section 1.121(b)(2) permits applicants to amend the specification by replacement sections (*e.g.*, as provided in §§ 1.77(b), 1.154(b), or § 1.163(c)). As with replacement paragraphs, the amended version of a replacement section is required to be provided in clean form, that is, without any markings to show the changes which have been made. A separate marked up version showing the changes in the section relative to the previous version must accompany the actual amendment as an aid to the examiner.

Section 1.121(b)(3) also permits applicants to amend the specification by submitting a substitute specification, provided the requirements of § 1.125(b) are met. An accompanying separate marked up version showing the changes in the specification relative to the previous version is also required.

Section 1.121(b)(4) requires that matter deleted by amendment pursuant to any of the earlier sections of § 1.121 can only be reinstated by a subsequent amendment presenting the previously deleted subject matter. A direction by applicant to simply remove a previously entered amendment will not be permitted.

Section 1.121(c)(1) requires that all amendments to a claim be presented in the form of a rewritten claim. Any rewriting of a claim will be construed as a direction to cancel the previous version of the claim. *See In re Byers*, 230 F.2d 451, 455, 109 USPQ 53, 55 (CCPA 1956)(amendment of a claim by inclusion of an additional limitation had exactly the same effect as if the claim as originally presented had been cancelled and replaced by a new claim including that limitation). Section 1.121(c)(1)(i) requires that any rewritten or newly added claim be submitted in clean form, that is, with no markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added, *e.g.*, ''amended,'' ''twice amended,'' or ''new.'' Section 1.121(c)(1)(ii) requires that a marked up version of any amended claim be submitted, including a parenthetical expression ''amended,'' ''twice amended,'' etc., that should follow the claim number, on pages separate from the amendment, to show the changes that have been made by way of brackets (for deleted matter) and underlining (for added matter), or by any other suitable method of comparison. This will assist the examiner in the examination process. The parenthetical expression ''amended,'' ''twice amended,'' *etc.* should be the same for both the clean version of the claim under § 1.121(c)(1)(i) and the marked up version under this paragraph. A marked up version does not have to be supplied for any added claims or any canceled claims. If a marked up version is supplied to show changes made to amended claims, however, applicant should identify (in the marked up version) any added or canceled claims with a statement, such as, ''Claim 6 has been canceled.''

Section 1.121(c)(2) requires that a cancelled claim can be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

Section 1.121(c)(3) provides for the optional submission of a clean version (with no markings) of all of the pending claims in one amendment paper. The provisions under § 1.121(c)(1)(i) of this section provide for only the submission of newly added or amended claims in clean form and compliance with this section is required by March 1, 2001. During the transition phase, there will be a large number of pending applications having claims with underlining and bracketing (from amendments made prior to the effective date of the rule change) and claims in clean form (from amendments made after the effective date of the rule change) in the pending claim set. Applicants may wish to consolidate all previous versions of pending claims from a series of separate amendment papers into a single clean version in a single amendment paper. Providing this consolidation of claims in the file will be beneficial to both the Office and the applicant for patent printing purposes. When rewriting a claim in the clean set, the parenthetical expression, if any, from the claim to be rewritten should not be repeated in the clean set. Thus, the only time a parenthetical expression should appear in the clean set is when a claim is being amended.

Entry of an entire clean claim set is subject to the provisions of §§ 1.116(b)

and 1.312. For example, after receipt of a notice of allowance, applicant may wish to submit an entire clean set of claims under § 1.312, making no changes, to make publication of the patent as accurate as possible. This type of amendment will be entered. Where, however, an amendment is submitted under either § 1.116 or § 1.312 which contains an entire clean set of claims, some of which may be amended, the examiner may choose not to enter the amendment pursuant to the provisions of § 1.116 or § 1.312.

The submission of a clean version of all the pending claims shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version would only be needed for claims being changed by the current amendment (see § 1.121(c)(1)(ii)). Any claim not accompanied by a marked up version will constitute an assertion that it has not been modified relative to the immediate prior version. Thus, if applicant is not making any amendments to the claims, but is merely presenting all pending claims in clean form, without any underlining or bracketing, a marked up version should not also be submitted. The examiner has no responsibility or burden to ensure the accuracy of applicant's claim rewriting.

Section 1.121(d) is amended to clarify the requirements for amending figures of drawings in an application. A marked up copy showing changes in red must be filed for approval by the examiner. Upon approval by the examiner, new drawings in compliance with § 1.84 must be filed.

Sections 1.121(e) and (f) correspond to §§ 1.121(a)(5) and (a)(6) of the former rule and now include section titles.

Section 1.121(g) permits the Office to make amendments to the specification, including the claims, by examiner's amendments without paragraph/section/claim replacement in the interest of expediting prosecution and reducing cycle time. Additions or deletions of subject matter in the specification, including the claims, may be made by instructions to make the change at a precise location in the specification or the claims. The examiner's amendment can be created by the examiner from a facsimile transmission or e-mailed amendment received by the examiner and referenced in the examiner's amendment and attached thereto. Any subject matter, in clean version form, to be added to the specification/claims should be set forth separately by applicant/practitioner in the e-mail or facsimile submission apart from the remainder of the submission. Only that portion of an e-mail or facsimile directed to a clean version of the subject matter to be added should be copied and attached to the examiner's amendment. A paper copy of the entire e-mail or facsimile submission should be entered in the file. Examiners would not be required to electronically save any e-mails once any e-mails or attachments thereto were printed and became part of an application file record. The e-mail practice that is an exception for examiner's amendments is restricted to e-mails *to* the examiner from the attorney/applicant and should not be generated *by* the examiner to the attorney/applicant unless such e-mails are in compliance with all of the requirements set out in MPEP 502.03.

Comment 59: Many of the comments received were opposed to the proposed change in amendment practice which would require usage of numbered paragraphs.

Response: In view of the objections to requiring numbered paragraphs, revised § 1.121(b)(1)(i) merely provides for the optional use of numbered paragraphs. Further, § 1.121(b)(1)(i) does not require amendment via substitute specification if numbered paragraphs are not used. Revised § 1.121(b)(1)(i) provides that applicants may submit amended replacement or new paragraphs if a specific location in the specification is identified.

Comment 60: A concern was raised in a number of comments that replacement paragraphs would make the identification of changes more obscure than the present system of using bracketing and underlining, would place an extra burden on practitioners and their staffs, and would work against reducing paper submissions if applicants were required to submit marked up copies of the desired changes.

Response: The comments have not been adopted. The replacement paragraph requirement, as well as the rewritten claim requirement, are both necessary to facilitate the publication of patents more expeditiously and with fewer errors. The Office's goal is to eliminate the use of red ink and bracketing/underlining in the amendment of patent applications, because OCR scanning techniques now employed in the preparation of patents for publication can best accommodate ''clean form'' insertions of amended subject matter. The submission of marked up versions may, for a time, increase file size but will provide the examiner with an easy way to compare the most recent amendments with earlier versions in the application files. While it may be possible for examiners to compare the clean version with the previous version in order to detect changes, in the interest of reduced cycle time, a review of a marked up version of an amendment to show the changes that have been made, is still a very effective and useful tool to the examiner during the examination process. Sections 1.121 (b)(1)(3) and (c)(1)(ii), however, do not require that marked up versions of added or new claims, or paragraphs, be supplied so the size of the marked up version, and the burden on the practitioner to prepare the marked up version, should be minimized. The new requirements provide the needed comparative basis (for paper copies) during the transition phase into an electronic file wrapper (EFW) environment.

Comment 61: Several comments suggested identifying the replacement paragraphs by page number and line number or through the use of replacement pages.

Response: The changes to § 1.121 are intended, in part, to serve the Office and its customers during a transition into an electronic file wrapper (EFW) environment. Accordingly, total paragraph replacement will most effectively achieve the desired results. The suggestion to permit identification of paragraphs by any unambiguous method (*e.g.*, paragraph beginning at identified page number and line number) is reasonable, and it will be permitted in § 1.121(b)(1)(i). The suggestion to permit use of replacement pages, however, will not be adopted as it will not be practical in an EFW environment.

Comment 62: One comment suggested that the instruction to present all amendments to claims as rewritten claims is likely to be understood by most practitioners as requiring the indication of insertions and deletions, and not as a requirement to submit a clean version of the amended claim. This might encourage applicants to submit a new schedule of amended claims in the form of new renumbered claims, thereby avoiding the requirement for both a clean version and a marked up version of pending claims.

Response: The requirement of the rule to provide a clean version along with a marked up version is not ambiguous. The intent of the change is twofold: (1) To provide a clean version for scanning purposes in the publication process with a concomitant reduction in the number of processing errors; and (2) to provide an aid to the examiner in the examination process by way of a marked up version indicating changes from the previous version of the claim. While circumventing the intent of the rule may

be possible, it seems to be in the best interest of applicants, as true partners in the examination process, to assist the examination process wherever possible. Providing a marked up version, in today's environment of easy-to-use software to accomplish this result, is not anticipated to be that burdensome to applicants.

Comment 63: One comment suggested that the requirement for replacement paragraphs/claims not be made applicable to examiner amendment practice in order to encourage amendments that expedite prosecution.

Response: This suggestion has been adopted with the inclusion of an exception for examiners when preparing examiner's amendments. Examiners will not be required to rewrite paragraphs of the specification or claims in an examiner's amendment when preparing an application for allowance, nor will a marked up version be required.

Comment 64: One comment questioned whether applicants could present in a single paper, a clean version of all of the pending claims in the application.

Response: In view of the fact that many pending applications will include amendments made prior to the effective date of the rule change as well as amendments made subsequent to the effective date of the rule change, the suggestion that all of the claims be re-presented in a single paper in clean form is reasonable and will be permitted in the final rule as an option. See § 1.121(c)(3). No accompanying marked up version will be necessary, unless the paper being submitted also includes amendments to some of the claims. In that case, a marked up version of only the claims being amended in the current paper will be required. It will be understood by the Office that any claims not accompanied by a marked up version will constitute an assertion that they have not been changed relative to the immediate prior version.

Section 1.125: Section 1.125(b)(2) is amended to require that all the changes to the specification (rather than simply all additions and deletions) be shown in a marked up version, with the term ''version'' being substituted for the term ''copy'' to avoid any confusion as to what is supposed to be supplied. Section 1.125(b)(2) is also amended to provide that numbering the paragraphs of the specification of record is not considered a change that must be shown. Thus, the marked up version of the substitute specification need not show the numbering of the paragraphs of the specification of record, and no marked up version of the substitute specification is required if the only change is numbering of the paragraphs of the specification of record. Section 1.125(c) is amended to encourage that the paragraphs of any substitute specification be numbered in a manner consistent with § 1.52(b)(6).

Section 1.131: The heading of § 1.131 is amended to clarify that it applies to overcoming other activities in addition to cited patents or publication (by deletion of the recitation to only a cited patent or publication). Section 1.131(a) is also amended for simplicity.

Section 1.131(a) is specifically amended to provide that when any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or a party qualified under §§ 1.42, 1.43, or § 1.47 may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. Section 1.131(a) is amended to eliminate the provisions that specify which bases for rejection must be applicable for § 1.131 to apply. Instead, the approach is that § 1.131 is applicable to overcome a rejection unless the rejection is based upon a U.S. patent to another or others which claims the same patentable invention as defined in § 1.601(n) (§ 1.131(a)(1)) or a statutory bar. This avoids the situation in which the basis for rejection is not a statutory bar (under 35 U.S.C. 102(a) based upon prior use by others in the United States) and should be capable of being antedated, but the rejection is not specified as a basis for rejection that must be applicable for § 1.131 to apply.

Affidavits under § 1.131 to overcome rejections based on prior knowledge or use under 35 U.S.C. 102(a) are effective on the date of publication in the **Federal Register** for all pending applications where such issue needs to be addressed (to include appropriately filed requests for reconsideration).

Section 1.131(a) is also amended to provide that the effective date of a U.S. patent is the date that such U.S. patent is effective as a reference under 35 U.S.C. 102(e). MPEP 2136.03 provides a general discussion of the date a U.S. patent is effective as a reference under 35 U.S.C. 102(e). Finally, § 1.131(a) is amended to provide that prior invention may not be established under § 1.131 if either: (1) The rejection is based upon a U.S. patent to another or others which claims the same patentable invention as defined in § 1.601(n); or (2) the rejection is based upon a statutory bar.

Section 1.132: Section 1.132 is amended to eliminate the provisions that specify which bases for rejection must be applicable for § 1.132 to apply. Instead, the approach is that § 1.132 is applicable to overcome a rejection unless the rejection is based upon a U.S. patent to another or others that claims the same patentable invention as defined in § 1.601(n). Section 1.132 is specifically amended to state that: (1) When any claim of an application or a patent under reexamination is rejected or objected to, an oath or declaration may be submitted to traverse the rejection or objection; and (2) an oath or declaration may not be submitted under this section to traverse a rejection if the rejection is based upon a U.S. patent to another or others that claims the same patentable invention as defined in § 1.601(n).

Affidavits under § 1.132 to overcome rejections based on prior knowledge or use under 35 U.S.C. 102(a) are effective on the date of publication in the **Federal Register** for all pending applications where such issue needs to be addressed (to include appropriately filed requests for reconsideration).

Sections 1.131 and 1.132 are procedural in nature providing mechanisms for the submission of evidence to antedate or otherwise traverse a rejection; however, they do not address the substantive effect of the submission of such evidence on the objection or rejection at issue. *See, e.g., In re Zletz*, 893 F.2d 319, 322–23, 13 USPQ2d 1320, 1322–23 (Fed. Cir. 1989) (§ 1.131 provides an ex parte mechanism whereby a patent applicant may antedate subject matter in a reference); *Newell Cos.* v. *Kenney Mfg.*, 864 F.2d 757, 768–69, 9 USPQ2d 1417, 1426–27 (Fed. Cir. 1988) (the mere submission of evidence under § 1.132 does not mandate a conclusion of patentability). An applicant's compliance with §§ 1.131 or 1.132 means that the applicant is entitled to have the evidence considered in determining the patentability of the claim(s) at issue. It does not mean that the applicant is entitled as a matter of right to have the rejection of or objection to the claim(s) withdrawn.

Section 1.133: Section 1.133 (a) is amended to create §§ 1.133(a)(1) through (a)(3). Section 1.133(a)(1) provides that interviews must be conducted on ''Office premises'' (rather than ''in the examiner's rooms''). The purpose of this change is to account for interviews conducted in conference rooms or by video conference.

Section 1.133(a)(2) is amended to conform to the practice in MPEP 713.02 (of ordinarily) providing for an interview relating to patentability of a pending application where the

application is a continuing or substitute application. The paragraph is also amended by changing interview to the singular to clarify that ordinarily a single interview prior to first Office action is permitted in a continuing or substitute application.

Comment 65: One comment urged that interviews be allowed in a CPA prior to a first Office action.

Response: The comment has been adopted in a broader manner to apply to all continuations and substitute applications that conform to practice set forth in the MPEP.

Section 1.136: Section 1.136(c) is added to provide that if an applicant is notified in a ''Notice of Allowability'' that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the ''Notice of Allowability'' or in an Office action having a mail date on or after the mail date of the ''Notice of Allowability'': (1) The period for submitting an oath or declaration in compliance with § 1.63; and (2) the period for submitting formal drawings set under § 1.85(c). It had also been proposed to add a third item: The period for making a deposit that is set under § 1.809(c). This portion has been held in abeyance in view of § 4805 of the ''American Inventor's Protection Act of 1999.'' Section 4805(c) requires that in drafting regulations affecting biological deposits (including any modification of title 37, Code of Federal Regulations, § 1.801 *et seq.*), the Office shall consider the recommendations of a study that is mandated under that section. Any change relating to time periods for deposits after mailing of the ''Notice of Allowability'' will be postponed until the study is completed. See also the change that was proposed to § 1.809.

Elimination of the § 1.136 (and § 1.85(c)) extension of time for filing corrected or formal drawings applies only where a Notice of Allowability requiring the corrected or formal drawing has been mailed on or after sixty days after publication in the **Federal Register**.

Section 1.137: Section 1.137(c) is amended to provide that any petition under § 1.137 in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted equivalent to the lesser of: (1) The period of abandonment of the application; or (2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed. This change will further harmonize effective treatment under the patent term provisions of 35 U.S.C. 154 (b) and (c) of utility and plant applications filed before June 8, 1995, with utility and plant applications filed on or after June 8, 1995. Section 1.137(c) also provides that its terminal disclaimer requirement does not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, or to lapsed patents.

The amendments to revivals under § 1.137 is effective on the date of publication in the **Federal Register**.

When a terminal disclaimer (under § 1.137(c)) is filed with a petition under § 1.137 to revive an abandoned application, the Office currently indicates the period disclaimed in the decision granting such petition. The Office, however, cannot determine (at the time a petition to revive is granted) the period disclaimed under revised § 1.137(c) (*i.e.*, which period is lesser: The period of abandonment of the application, or the period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed). Therefore, the Office will discontinue indicating the period disclaimed under § 1.137(c) in its decision granting a petition under § 1.137 to revive an abandoned application.

The period of abandonment is the number of days between the date of abandonment and the mailing date of the decision reviving the abandoned application. MPEP 710.01(a) provides an explanation of how the date of abandonment is determined. The date that is twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed, should be ascertainable from the filing date and continuity information provided on the front page of the patent. The period extending beyond that date is the number of days between that date and the day that is seventeen years from the date of grant of the patent. The period disclaimed is the lesser of these two periods.

Section 1.138: Section 1.138 is amended to create §§ 1.138(a) and (b), and to clarify the signature requirement for a letter (or written declaration) of express abandonment. Section 1.138(a) provides that: (1) An application may be expressly abandoned by filing in the United States Patent and Trademark Office a written declaration of abandonment identifying the application; and (2) express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act before the date of issue. Section 1.138(b) also provides that a written declaration of abandonment must be signed by a party authorized under §§ 1.33(b)(1), (b)(3), or (b)(4) to sign a paper in the application, except that a registered attorney or agent, not of record, who acts in a representative capacity under the provisions of § 1.34(a) when filing a continuing application, may expressly abandon the prior application as of the filing date granted to the continuing application.

Section 1.152: Section 1.152 was amended to delete the reference to the requirement for a petition for color photographs and drawings as unnecessary in view of the clarifications to §§ 1.84(a), (a)(2), (b)(1), and (b)(2) that now include a specific reference to design applications. Former §§ 1.152(a), (a)(1), and (a)(2) were deleted with the remaining text combined into a single paragraph.

Section 1.152 was amended in 1997 to clarify Office practice that details disclosed in the drawings or photographs filed with a design application are considered to be an integral part of the disclosed and claimed design, unless disclaimed. *See Changes to Patent Practice and Procedure*, Final Rule Notice, 62 FR 53131, 53164 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 91 (October 21, 1997). A subsequent decision by the Federal Circuit, however, has called this practice into question. *See In re Daniels,* 144 F.3d 1452, 46 USPQ2d 1788 (Fed. Cir. 1998), *rev'g, Ex parte Daniels*, 40 USPQ2d 1394 (Bd. Pat. App. & Int. 1996). Accordingly, the Office is amending § 1.152 to eliminate these provisions. *See Removal of Surface Treatment From Design Drawings Permitted*, Notice, 1217 *Off. Gaz. Pat. Office* 19 (December 1, 1998).

The elimination of provisions relating to the integral nature of designs in § 1.152 is effective on the date of publication in the **Federal Register**.

Section 1.154: Section 1.154(a) is separated into §§ 1.154(a) and (b) and the material clarified. The order of the papers in a design patent application, including the application data sheet (*see* § 1.76), is listed in § 1.154(a). The order of the sections in the specification of a design patent application is listed in § 1.154(b). New § 1.154(c) corresponds to § 1.77(c) and provides that the section headings should be in uppercase letters without underlining or bold type.

Comment 66: One comment suggested adding the words ''in a design application'' to the end of the § 1.154 header for clarity.

Response: The comment has been adopted.

Section 1.155: Section 1.155 is revised to eliminate all former § 1.155 provisions as being unnecessarily duplicative of the provisions of §§ 1.311(a) and 1.316, which apply to the issuance of all patents, including designs. Revised § 1.155 establishes an expedited procedure for design applications. The procedure is available to all design applicants who first conduct a preliminary examination search and file a request for expedited treatment accompanied by a fee commensurate with the Office cost of the expedited treatment and handling (§ 1.17(k)). This cost-based expedited treatment is intended to fulfill a particular need by affording rapid design patent protection that may be especially important where marketplace conditions are such that new designs on articles are typically in vogue for limited periods of time. The Office requires a statement that a preexamination search was conducted, which must also indicate the field of search and include an information disclosure statement in compliance with § 1.98. Formal drawings in compliance with § 1.84 are also required. The applications will be individually examined with priority, and the clerical processing will be conducted and/or monitored by specially designated personnel to achieve expeditious processing through initial application processing and the Design Examining Group. The Office will not examine an application that is not in condition for examination even if the applicant files a request for expedited examination under this section.

The expedited procedure for design applications under § 1.155 is effective on the date of publication in the **Federal Register**.

Comment 67: Two comments considered the $900 fee for the expedited processing of design applications to be excessive when compared to the fee for a ''Petition to Make Special.''

Response: Based on a conservative cost estimate, the $900 fee specified in § 1.17(k) for the expedited examination of design applications is the fee necessary to recover the Office's cost of providing such expedited examination. *See* 35 U.S.C. 41(d). An application granted special status pursuant to a successful ''Petition to Make Special'' is prioritized while it is on the examiner's docket so that the application will be examined out of turn responsive to each successive communication from the applicant requiring Office action. The expedited treatment available under § 1.155, however, occurs through initial application processing and the Design Examining Group. For a patentable design application, the expedited treatment would be a streamlined filing-to-issuance procedure. This procedure further expedites design application processing by decreasing clerical processing time as well as the time spent routing the application between processing steps. Specially designated personnel will be required to conduct and/or monitor the expedited clerical processing. Also, expedited design applications may be individually treated throughout the examination process where necessary for expedited treatment, whereas normally, the search phase of design application examination is conducted in groups. Further, the ''Petition to Make Special'' procedure will continue to be made available without any anticipated increase in the required petition fee.

Comment 68: Two comments suggested requiring a fee in exchange for expedited examination instead of requiring a fee ''[F]or filing a request for expedited examination under § 1.155(a)'' as stated in § 1.17(k). According to the comments, the suggested recharacterization of the fee would permit refunding the fee as a payment made ''in excess of that required'' (§ 1.26) if the expedited service is not in fact provided.

Response: The comments are not adopted. Statutory authority for § 1.26 is found at 35 U.S.C. 42(d) which permits a refund ''of any fee paid by mistake or any amount paid in excess of that required.'' According to the statute, any refund of an ''amount paid in excess'' must be based upon an overpayment of a fee that was, in fact, ''required'' when the fee was paid. The suggested fee characterization would have no effect in that regard. The required amount is the § 1.17(k) fee whether it is for a request for expedited examination or for an actual expedited examination. Furthermore, the rule is silent as to any timeframe definition of expedited treatment. It is the Office's intent to set forth an objective for examination, such as three months, and an objective for printing. Should the Office fail to meet a stated objective for any one particular design application, applicant may still have received significant benefit, particularly if the objective was missed only by a week or month. Applicants can choose whether to spend the additional fee in part based on the Office's performance in meeting its objectives with other design applications.

Comment 69: One comment reasoned that in order to provide the expedited service without compromising examination quality, design application examiners would have to be allotted extra time to individually search expedited applications.

Response: Individual searching of a design application may not necessarily be required to meet the objective of expedited treatment. Where an individual search is required, the Technology Center will address the matter on a case-by-case basis.

Section 1.163: The title of § 1.163 is amended for clarity by the addition of ''in a plant application.''

Section 1.163(a) second sentence is amended by substituting ''For'' for ''[i]n the case of.''

Section 1.163(b) is amended to delete the requirement for two copies of the specification for consistency with the current Office practice. *See Interim Waiver of 37 CFR § 1.163(b) for Two Copies of a Specification of an Application for a Plant Patent,* Notice, 1213 *Off. Gaz. Pat. Office* 109 (August 4, 1998). Section 1.163(c) is separated into §§ 1.163(b) and (c). The order of the papers in a plant patent application, including the application data entry sheet (*see* § 1.76) is listed in § 1.163(b). The order of the sections in the specification of a plant patent application are listed in § 1.163(c). New § 1.163(d) corresponds to § 1.77(c) and provides that the section headings should be in uppercase letters without underlining or bold type.

New § 1.163(c)(4) and § 1.163(c)(5) request that the plant patent applicant state the Latin name and the variety denomination for the plant claimed. As discussed above, the Office, has been asked to compile a database of the plants patented and the database must include the Latin name and the variety denomination of each patented plant, and having this information in separate sections of the plant patent application will make the process of compiling this database more efficient.

Current §§ 1.163(c)(3) through (c)(5) are redesignated §§ 1.163(c)(1) through (c)(3), respectively.

Sections 1.163(c)(14) and (d) are amended to delete the reference to a plant patent color coding sheet. The color codes and the color coding system are generally included in the specification. Repeating the color coding information in a color coding sheet increases the risk of error and inconsistencies.

Comment 70: One comment suggested that the title be amended for clarity by addition of ''in a plant application.''

Response: The suggestion has been adopted.

Section 1.173: Section 1.173 is amended to consolidate (1) the requirements for the filing of reissue applications formerly in § 1.173, (2) the requirements for amending reissue applications formerly in § 1.121, and (3) the requirements for reissue drawings formerly in § 1.174. Section 1.174 is being eliminated as the requirements for filing drawings in reissue applications have been moved to § 1.173. Section 1.173 also has been amended to include the same basic filing requirements for reissue applications that are currently only set forth in the MPEP. All of these changes have been made so that applicants will be able to find, in a single rule section, all of these critical requirements that must be complied with when preparing and filing a reissue application. Further, the requirements for the specification, claims and drawings are now set forth in separate paragraphs, which are clearer and easier to understand.

The title of § 1.173 is amended to ''Reissue specification, drawings, and amendments'' in order to more aptly describe the inclusion of all filing and amendment requirements for the specification, including the claims, and the drawings of reissue applications in a single section.

Section 1.173(a) provides the current requirements for the contents of a reissue application at filing. The existing prohibition against new matter in a reissue application, and the statutory provision permitting enlarging the scope of the original patent claims within two years of the patent date, formerly in § 1.121(b)(5), are added to this section.

Section 1.173(a)(1) now requires that the specification, including the claims, be furnished in the form of a copy of the printed patent in double column format (as the patent can be simply copied without cutting into single columns) with one page of the patent appearing on only one side of each individual page of the specification of the reissue application. This format for submitting a reissue application represents a change from what was formerly set out as an option in MPEP 1411. Section 1.173(a)(1) also provides that amendments made to the specification at filing be made according to § 1.173(b). A cross-reference has been added to § 1.52, wherein form requirements are provided for papers in patent applications, including reissue applications. Additionally, a copy of any disclaimer (§ 1.321), certificate of correction (§§ 1.322 through 1.324), or reexamination certificate (§ 1.570) issued in the patent must be supplied. See also § 1.178.

Section 1.173(a)(1) applies to reissue applications filed on or after two months from the date of publication of the rule in the **Federal Register**.

Section 1.173(a)(2) sets forth the requirements for the drawings at the time the reissue application is filed. If clean copies (*i.e.,* good quality photocopies free of any extraneous markings) of the drawings from the original patent are supplied by applicant at the time of filing the reissue application, and the copies meet the requirements of § 1.84, no further (formal) drawings will be required. The former provision of § 1.174 requiring temporary drawings is eliminated in view of this amendment to § 1.173. The Office will now print a reissue patent using clean copies of the patent drawings. How changes to the patent drawings may be made at the time of filing of the reissue application, or during the prosecution, is now specifically set forth. Such changes must be made in accordance with the requirements of amended § 1.173(b)(3) (which are essentially the requirements of former §§ 1.121(b)(3)(i) and (ii)). If applicant does not provide clean copies of the patent drawings, or if changes are made to the drawings during the reissue prosecution, drawings in compliance with § 1.84 will be required at the time of allowance. The practice of transferring drawings from the patent file is eliminated since clean photocopies of patent drawings will be acceptable for use in the printing of the reissue patent.

Section 1.173(b) provides for the manner of making amendments in a reissue application. Amendments may be made either by physically incorporating the changes within the body of the specification (including the claims) as filed, or by a separate amendment paper (either at filing or during the prosecution of the application), directing that specified changes be made to the application specification, including the claims, or to the drawings. If amendments are submitted as part of the specification as filed, they may be incorporated by cutting the column, inserting the added material and rejoining the remainder of the column.

Sections 1.173(b)(1) and (b)(2) incorporate the provisions formerly part of §§ 1.121(b)(1) and (b)(2) as to the manner of amending the specification and claims, respectively. Section 1.173(b)(1) is clarified to note that the paragraph applies whether or not an amendment is submitted on paper or compact disc pursuant to §§ 1.52(e)(1) and 1.821(c) but not for discs submitted under § 1.821(e).

Section 1.173(b)(3) incorporates the provisions formerly set forth in § 1.121(b)(3) as to amending reissue drawings.

Section 1.173(c) now requires that whenever an amendment is made to the claims, either at the time of filing or during the prosecution, the amendment must be accompanied by a statement as to the status of all patent claims and all added claims, and an explanation as to the support in the disclosure for any concurrently made changes to the claims.

Section 1.173(c) applies to any pending or newly filed application two months from the date of publication of the rule in the **Federal Register**.

Section 1.173(d) incorporates the provisions of former §§ 1.121(b)(1)(iii) and (b)(2)(i)(C) as to how changes in reissue applications are shown in the specification and claims, respectively. An exception to the normal underlining requirement is made for compact disc submissions. Instead of underlining the material, the following XML tag must be used to identify the material that is being added: start with <U> and end with <U> to properly identify the material being added.

Sections 1.173(e), (f), and (g) merely reiterate requirements for retaining original claim numbering, amending the disclosure when required, and making amendments relative to the original patent, which were formerly set out in §§ 1.121(b)(2)(B), (b)(4), and (b)(6), respectively.

Comment 71: A comment was made calling attention to the fact that amendments made to sequence listings are provided for in sections on sequence listings (§ 1.821 *et seq.*).

Response: The comment has been adopted. With respect to the existing practice of making submissions under § 1.821(e), § 1.173 has been amended to limit the application of this section to computer programs and tables (see § 1.52(e)(1)) and to § 1.821(c), but not to submissions under § 1.821(e).

Section 1.174: Section 1.174 is removed (and reserved) in view of the inclusion of all filing and amendment requirements for reissue drawings in amended § 1.173. Thus, in addition to the reissue filing requirements of former § 1.173, the reissue amendment requirements of former § 1.121(b) and the reissue drawing requirements of former § 1.174 are all included in a single rule, amended § 1.173. The changes consolidating several former rules into a single rule should make the requirements for all reissue filings and amendments quicker to locate and easier to understand.

Section 1.176: Section 1.176 is amended to create §§ 1.176(a) and (b). Section § 1.176(a) contains material retained from the former rule, while § 1.176(b) contains new material permitting certain restrictions.

Section 1.176 is amended to eliminate the prohibition against requiring division in a reissue application. The Federal Circuit has indicated that 35 U.S.C. 251 does not, under certain circumstances, prohibit an applicant in a reissue application from adding claims directed to an invention which is separate and distinct from the invention defined by the original patent claims. *See In re Amos,* 953 F.2d 613, 21 USPQ2d 1271 (Fed. Cir. 1991). Former § 1.176, however, prohibited the Office from making a restriction requirement in a reissue application. This prohibition in former § 1.176, in combination with the Federal Circuit's decision in *Amos,* frequently placed an unreasonable burden on the Office in requiring the examination of multiple inventions in a single reissue application.

Elimination of the prohibition against restriction in divisional application under § 1.176 is effective for reissue applications filed on or after the date that is sixty days after the date of publication in the **Federal Register**.

Section 1.176(b) now allows the Office to make a restriction requirement in a reissue application between claims added in a reissue application and the original patent claims, where the added claims are directed to an invention which is separate and distinct from the invention(s) defined by the original patent claims. The criteria for making a restriction requirement in a reissue application between added claims and original patent claims is the same as that applied in an original application. *See* MPEP 806 through 806.05(i). Where a restriction requirement is made, the original patent claims will be held to be constructively elected and the examiner will issue an Office action on the merits providing notification of the restriction requirement in such Office action.

If a requirement for restriction between the claims of the original patent and those added claims which are directed towards previously unclaimed subject matter is made by the examiner, the group containing the original patent claims (amended or unamended) will be held to be constructively elected, unless a disclaimer of all the patent claims is filed in the reissue application, which disclaimer cannot be withdrawn by applicant.

The original patent claims (which have been constructively elected) will receive a complete examination on their merits, while the nonelected (added) claims (to any added invention(s)) will be held in abeyance in a withdrawn status. These nonelected (added) claims will only be examined if filed in a divisional reissue application. If the reissue application contains only original unamended claims and is found to be allowable, further action in the reissue application may have to be suspended, since the Office will not allow a reissue patent which does not correct any error in the original patent. If the divisional reissue application containing the added claims is examined and is found to be allowable, the Office may recombine the several sets of examined and allowable claims into one of the reissue applications, which then can be allowed. See the discussion of § 1.177 for additional details for presenting multiple reissue applications.

The Office is requiring a constructive election of the original (patented) claims to ensure that the original (patented) claims receive an examination on their merits. If a reissue applicant was permitted to elect the added claims directed toward previously unclaimed subject matter, and, after an examination of only these added claims, the divisional claims were determined to be unpatentable, applicant would most likely let the reissue application go abandoned and not file a divisional reissue application directed toward the original claims of the patent. In this circumstance, no examination of the original claims of the patent would be made. This would not be appropriate as the filing of the reissue application would mandate that the original patent claims be reevaluated/examined again. Thus, a constructive election of the original patent claims and an examination thereof in the first reissue application would force the applicant to file a divisional reissue application with claims to the added invention in order to secure an examination of such added claims.

The Office will continue to not require restriction among original claims of the patent (*i.e.,* among claims that were in the patent prior to filing the reissue application) and the rule has been amended to reflect that practice. In order for restriction to be required between the original patent claims and added claims, the added claims must be directed toward inventions which are separate and distinct from the invention(s) defined by the original patent claims. Restriction between multiple inventions in the added claims will be permitted provided the added claims are drawn to several separate and distinct inventions.

Section 1.176 has been further amended to delete the two-month portion of the rule relating to when a reissue application will be acted upon. When any particular reissue application is taken up for action is an internal Office policy that need not be set forth in the rules of practice. Moreover, it is the intent of the Office to consider acting on divisional reissue applications prior to expiration of the two-month period after announcement of the reissue filing in the *Official Gazette.*

The amendments to this section are not intended to affect the types of errors that are or are not appropriate for correction under 35 U.S.C. 251 (*e.g.,* applicant's failure to timely file a divisional application is not considered to be the type of error that can be corrected by a reissue). *See In re Watkinson,* 900 F.2d 230, 14 USPQ2d 1407 (Fed. Cir. 1990); *In re Mead,* 581 F.2d 251, 198 USPQ 412 (CCPA 1978); and *In re Orita,* 550 F.2d 1277, 193 USPQ 145 (CCPA 1977).

Section 1.177: The title to § 1.177 has been amended to read ''Issuance of multiple reissue patents'' in order to include procedures pertaining to continuation reissue applications as well as divisional reissue applications.

Section 1.177 is amended to eliminate former requirements that divisional reissues be limited to separate and distinct parts of the thing patented, and that they be issued simultaneously unless ordered by the Commissioner. The rule is expanded to include continuations of reissues as well as divisionals. *See In re Graff,* 111 F.3d 874, 876–77, 42 USPQ2d 1471, 1473 (Fed. Cir. 1997). The Federal Circuit specifically stated:

. . . [35 U.S.C. 251, ¶ 3,] provides that the general rules for patent applications apply also to reissue applications, and [35 U.S.C. 251, ¶ 2,] expressly recognizes that there may be more than one reissue patent for distinct and separate parts of the thing patented. [35

U.S.C. 251] does not prohibit divisional or continuation reissue applications, and does not place stricter limitations on such applications when they are presented by reissue, provided of course that the statutory requirements specific to reissue applications are met. *See* [35 U.S.C. 251, ¶ 3]

. . . [35 U.S.C. 251, ¶ 2,] is plainly intended as enabling, not limiting. [35 U.S.C. 251, ¶ 2,] has the effect of assuring that a different burden is not placed on divisional or continuation reissue applications, compared with divisions and continuations of original applications, by codifying [*The Corn-Planter Patent,* 90 U.S. 181 (1874),] which recognized that more than one patent can result from a reissue proceeding. Thus, [35 U.S.C. 251, ¶ 2,] places no greater burden on [a] continuation reissue application than upon a continuation of an original application; [35 U.S.C. 251, ¶ 2,] neither overrides, enlarges, nor limits the statement in [35 U.S.C. 251, ¶ 3,] that the provisions of Title 35 apply to reissues.

See id. at 876–77, 42 USPQ2d at 1473.

Thus, the Federal Circuit has indicated that a continuation or divisional reissue application is not subject to any greater burden other than the burden imposed by 35 U.S.C. 120 and 121 on a continuation or divisional non-reissue application, except that a continuation or divisional reissue application must also comply with the statutory requirements specific to reissue applications (*e.g.,* the ''error without any deceptive intention'' requirement of 35 U.S.C. 251, ¶ 1).

Following *Graff,* the Office has adopted a policy of treating continuations/divisionals of reissue applications in much the same manner as continuations/divisionals of non-reissue applications. Accordingly, the former requirements of § 1.177 as to petitioning for non-simultaneous issuance of multiple reissue patents, suspending prosecution in an allowable reissue application while the other is prosecuted, and limiting the content of each reissue application to separate and distinct parts of the thing patented, are all eliminated. These requirements were considered unique to reissue continuations/divisionals, imposed additional burdens on reissue applicants, and are now inconsistent with the Federal Circuit's discussion of 35 U.S.C. 251, ¶ 2, in *Graff.*

The changes to § 1.177 relating to divisional reissues are effective on the date of publication of the rule in the **Federal Register** for all pending and new reissue applications.

Additionally, § 1.177(a) is amended to require that all multiple reissue applications of a single patent include as the first line of the respective specifications a cross-reference to the other reissue application(s). The cross-reference will provide the public with notice that more than one reissue application has been filed to correct an error (or errors) in a single patent. If one reissue has already issued without the appropriate cross-reference, a certificate of correction will be issued to provide the cross-reference in the issued reissue patent. The Office will initiate a certificate of correction under § 1.322 to include the appropriate cross-reference in the already issued first reissue patent before passing the pending reissue application to issue.

Section 1.177(b) is amended to require that all of the claims of the patent be presented in each application as amended, unamended or canceled, and that the same claim not be presented for examination in more than one application in its original unamended version. Any added claims must be numbered beginning with the next highest number following the last patent claim.

If the same or similar claims are presented in more than one of the multiple reissue applications, statutory double patenting (35 U.S.C. 101) or non-statutory (judicially created doctrine) double patenting may be considered by the examiner during examination, and appropriate rejections will be made. If needed to overcome the rejections, terminal disclaimers will be required in order to ensure common ownership of any non-distinct claims throughout each of the patents' lifetimes.

Amendments are concurrently made to permit restriction in reissue applications between the original patent claims and any added claims to separate and distinct subject matter (see change to § 1.176). If one or more divisional applications are filed after such a restriction requirement, § 1.177(c) provides that the resulting multiple reissue applications will be issued alone or together, but each of the reissue applications will be required to include changes which correct an error in the original patent before it can be issued as a reissue patent. If one of the applications resulting from the restriction requirement is found to be allowable without any changes relative to the patent (*i.e.,* it includes only all the original patent claims), further action will be suspended until one other reissue application becomes allowable; then, the two will be recombined and issued as a single reissue patent. If the several reissue applications resulting from the restriction each include changes correcting some error in the original patent, the reissue applications could be issued separately, with an appropriate cross-reference to the other(s) in each of the respective specifications.

Section 1.178: The title of § 1.178 is amended to reflect the addition of the material in new § 1.178(b), and the rule is amended to create § 1.178(a) containing some of the material in the former rule, and § 1.178(b).

Section 1.178(a) is amended to no longer require an offer to surrender the original patent at the time of filing as part of the reissue application filing requirements. Omission of this formality by applicants in the past has resulted in processing delays due to the Office's sending of a Notice to File Missing Parts of Application. The change to this section relaxes the former requirement and permits examination to commence without the ''offer'' to surrender the original patent. The requirement for actual surrender of the original patent (or a ''statement'' of its loss, as set out below) before the reissue application is allowed, however, is retained.

Section 1.178(a) is also amended to change ''affidavit or declaration'' (attesting to the loss or inaccessibility of the original patent) to ''statement.'' This change will eliminate the verification requirements of the former rule, which are formalities covered by §§ 1.4 and 10.18.

Replacement in § 1.178(a) of the oath or declaration with a statement that the original patent is lost or inaccessible is effective on the date of publication in the **Federal Register** for all pending or new reissue applications.

Section 1.178(b) has been added to require reissue applicants to call to the attention of the Office any prior or concurrent proceeding in which the patent (for which reissue is requested) is or was involved, such as interferences, reissues, reexaminations, or litigation (litigation covers any papers filed in the court or issued by the court, such as, for example, motions, pleadings, and court decisions including court orders) and the results of such proceedings. The duty to submit such information is a continuing duty and runs from the time the reissue application is filed until the reissue application is abandoned or issues as a reissue patent. The addition of § 1.178(b) is intended to further the Office's desire to make consistent both reissue and reexamination proceedings as much as possible (*see* §§ 1.565(a) and (b)). *See also* § 1.173(a)(1).

The need to call the attention of the Office to prior or concurrent proceedings in which the patent (for which reissue is requested) is or was involved applies to pending and new reissue applications.

Section 1.181: Section 1.181 provides generically for petitions to the

Commissioner of Patents and Trademarks concerning patent-related matters. Section 1.181(f) is amended to provide that any petition under 37 CFR part 1 not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely (except as otherwise provided). Thus, any petition under § 1.182 or § 1.183 not filed within two months from the mailing date of the action or notice placing petitioner on notice of the situation from which relief is requested may be dismissed as untimely.

The Office has long considered the two-month period in § 1.181(f) to be the benchmark for determining the timeliness of petitions. *See Changes to Patent Practice and Procedure,* 62 FR at 53161, 1203 *Off. Gaz. Pat. Office* at 88 (the Office considers the two-month period in § 1.181(f) to be the appropriate period by which the timeliness of a petition should be determined). Nevertheless, there appears to be some confusion as to when other petitions (*e.g.,* §§ 1.182 and 1.183) must be filed to be timely, or even whether there is any period within which other petitions must be filed to be timely. *See Helfgott* v. *Dickinson,* 209 F.3d 1328, 1333 n.3, 54 USPQ2d 1425, 1428 n.3 (Fed. Cir. 2000).

Therefore, the Office is revising § 1.181(f) to clarify that its two-month time period applies to any petition under 37 CFR part 1, except as otherwise provided. Section 1.181(f) is also amended to provide that this two-month period is not extendable. A number of sections (*e.g.,* §§ 1.377, 1.378, 1.644, 1.740) specify the time period within which a petition must be filed (or may be dismissed as untimely). The two-month time period in § 1.181(f) applies to a petition under any section that does not specify the time period within which a petition must be filed.

Section 1.193: Section 1.193(b)(1) is amended to provide that appellant may file a reply brief to an examiner's answer ''or a supplemental examiner's answer.'' The purpose of this amendment is to clarify the current practice that the appellant may file a (or another) reply brief within two months of a supplemental examiner's answer (§ 1.193), but the appellant must file any request for an oral hearing within two months of the examiner's answer (§ 1.194).

Section 1.303: Section 1.303(a) is amended to add the phrase ''to an interference'' between ''any party'' and ''dissatisfied with the decision of the Board of Patent Appeals and Interferences'' to correct an inadvertent omission.

Section 1.311: Section 1.311(b) is amended to create §§ 1.311(b), (b)(1), and (b)(2). Section 1.311(b) provides that an authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application only after the mailing of the notice of allowance. Accordingly, general authorizations to pay fees and specific authorizations to pay the issue fee that are filed prior to the mailing of a notice of allowance will generally not be treated as requesting payment of the issue fee and will not be given effect to act as a reply to the notice of allowance. Applicant, when paying the issue fee, should submit a new authorization to charge fees, such as by completing box 6b. on the current PTOL–85B form. Where no reply to the notice of allowance is received, the application will stand abandoned notwithstanding the presence of general authorizations to pay fees or a specific authorization to pay the issue fee that were submitted prior to mailing of the notice of allowance. Where an attempt is made to pay the issue fee but an incorrect amount is submitted, § 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL–85(B)) is completed by applicant and submitted, § 1.311(b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed authorization to charge fees, § 1.311(b). See also the change to § 1.26(b).

The limitation on authorization to charge issue fees to a deposit account under § 1.311(b) will apply only where a Notice of Allowance requiring the issue fee has been mailed on or after the date that is 60 days after publication in the **Federal Register**.

Previous § 1.311(b) caused problems for the Office that tended to increase Office processing time. The language used by applicants to authorize that fees be charged to a deposit account often varies from one application to another. As a result, conflicts arise between the Office and applicants as to the proper interpretation of authorizing language found in their applications. For example, some applicants are not aware that it is current Office policy to interpret broad language to ''charge any additional fees which may be required at any time during the prosecution of the application'' as authorization to charge the issue fee on applications filed on or after October 1, 1982. *See Deposit Account Authorization to Charge Issue Fee*, 1095 *Off. Gaz. Pat. Office* 44 (October 25, 1988), *reprinted at* 1206 *Off. Gaz. Pat. Office* 95 (January 6, 1998).

Even when the language preauthorizing payment of the issue fee was clear, the preauthorization presented problems for both the Office and practitioners. One problem was because it may not be clear to the Office whether a preauthorization is still valid after the practitioner withdraws or the practitioner's authority to act as a representative is revoked. If the Office charges the issue fee to the practitioner's deposit account, the practitioner may have difficulty getting reimbursement from the practitioner's former client. Another problem was that when the issue fee was actually charged at the time the notice of allowance is mailed, a notice to that effect was printed on the notice of allowance (PTOL–85) and applicant was given one month to submit/return the PTOL–85B with information to be printed on the patent. Applicants were sometimes confused, however, by the usual three-month time period provided for paying the issue fee and did not, therefore, return the PTOL–85B until the end of the normal three-month period. Since the Office does not wait for the PTOL–85B to be returned to begin electronic capture of the data to be printed as a patent, any PTOL–85B received more than a month after the issue fee has been paid may not be matched with the application file in time for the information thereon to be included on the patent.

Clerical problems are not the main reason for eliminating the practice. The Office would like all of the information necessary for printing a patent to be in the application when the issue fee is paid. Thus, the Office is eliminating petitions under § 3.81(b), see below, and intends to no longer print any assignee data that is submitted after payment of the issue fee. As explained in the previous two Notices, it is not generally in applicant's best interest to pay the issue fee at the time the notice of allowance is mailed, since it is much easier to have a necessary amendment or an information disclosure statement considered if filed before the issue fee is paid rather than after the issue fee is paid. See current §§ 1.97 and 1.312(b). Also, once the issue fee has been paid, applicant's window of opportunity for filing a continuing application is reduced and the applicant no longer has the option of filing a continuation or divisional application as a continued prosecution application (CPA) under § 1.53(d). *See Patents to Issue More Quickly After Issue Fee Payment*, 1220 *Off. Gaz. Pat. Office* 42, and *Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*,

1221 *Off. Gaz. Pat. Office* 14. Many applicants find the time period between the mailing date of the notice of allowance and the due date for paying the issue fee useful for re-evaluating the scope of protection afforded by the allowed claim(s) and for deciding whether to pay the issue fee and/or to file one or more continuing applications.

If prompt issuance of the patent is a high priority, after receipt of the notice of allowance applicant may promptly return the PTOL–85B (supplying any desired assignee and attorney information) and pay the issue fee. In this way, the Office will be able to process the payment of the issue fee and the information on the PTOL–85B as a part of a single processing step. Further, no time would be saved even if the issue fee was preauthorized for payment as the Office would not have the assignee and attorney data which is taken from the PTOL–85B.

As an additional aid to applicants, the rule as proposed has been further amended to include §§ 1.311(b)(1) and (b)(2) that can act as safety mechanisms. Where it is clear that an applicant actually intends to pay the issue fee such as by submitting an incorrect issue fee amount, or completing the issue fee transmittal form provided by the Office with the notice of allowance, a general authorization to pay fees or a specific authorization to pay the issue fee, submitted prior to the mailing of a notice of allowance, will be allowed to act as payment of the correct issue fee.

Thus, it is not seen that the proposal to eliminate the preauthorization to pay the issue fee would have any adverse effects on our customers.

The suggestion of eliminating preauthorization of payment of the issue fee was discussed in Topic 19 of the Advance Notice and received a generally favorable response. Many patent attorneys stated that they considered preauthorization a dangerous practice which they would not use. Others thought that preauthorization was an important safety feature, and that the Office should fix the internal clerical problems which were motivating the change.

Comment 72: One comment was received in response to the Notice of Proposed Rulemaking. The comment supported the change, particularly in view of the stricter standards proposed to §§ 1.312 and 1.313.

Section 1.312: The proposal to amend § 1.312 was not proceeded with in this final rule, but has been included in the interim rule *Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (March 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (April 11, 2000).

Section 1.313: The proposal to amend § 1.313 was not proceeded with in this final rule, but has been included in the interim rule *Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (March 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (April 11, 2000).

Section 1.314: Section 1.314 is amended to change the reference to the fee set forth in ''§ 1.17(i)'' to the fee set forth in ''§ 1.17(h).'' This change is for consistency with the changes to §§ 1.17(h) and 1.17(i). See discussion of changes to §§ 1.17(h) and 1.17(i).

Section 1.322: Section 1.322(a) is amended to create §§ 1.322(a)(1) through (a)(4), and to incorporate the provisions of 35 U.S.C. 254.

Section 1.322(a)(1) provides that the Commissioner may issue a certificate of correction to correct a mistake in a patent, incurred through the fault of the Office, which mistake is clearly disclosed in the records of the Office. Section 1.322(a)(1)(i) provides that a certificate of correction may be issued at the request of patentee or the patentee's assignee. Section 1.322(a)(1)(ii) provides that a certificate of correction may be issued sua sponte by the Commissioner for mistakes that the Office discovers. Section 1.322(a)(1)(iii) provides that a certificate of correction may be issued based on information supplied by a third party.

Section 1.322(a)(2)(i) provides that there is no obligation on the Office to act on or respond to submissions of information or requests to issue a certificate of correction by a third party under § 1.322(a)(1)(iii). The provisions of §§ 1.322(a)(1)(iii) and (a)(2) are intended to provide the Office flexibility in handling a request by a third party without an obligation to do so. Section 1.322(a)(2)(ii) provides that a paper submitted by a third party under this section will not be made of record in the file that it relates to nor be retained by the Office. The Office, however, will review such paper to determine whether the Office wishes to proceed with a certificate of correction based on the information supplied in such a paper.

Section 1.322(a)(3) continues to provide that if the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 1.635.

Section 1.322(a)(4) continues to provide that the Office will not issue such a certificate on its own initiative without first notifying the patentee (including any assignee of record) at the correspondence address of record and affording the patentee an opportunity to be heard.

The certificate of correction practice re third parties applies to requests by third parties filed on or after two months from the date of publication in the **Federal Register**.

The former wording of § 1.322(a) contained language (''certificate will not be issued at the request or suggestion of anyone not owning an interest in the patent * * * without first notifying the patentee'') which has led third parties to conclude that they have standing to demand that the Office issue, or refuse to issue, a certificate of correction. Third parties do not have standing to demand that the Office issue, or refuse to issue, a certificate of correction. *See Hallmark Cards, Inc.* v. *Lehman*, 959 F. Supp. 539, 543–44, 42 USPQ2d 1134, 1138 (D.D.C. 1997). Section 1.322(a)(2), therefore, has been amended to clarify that third parties do not have standing to demand that the Office act on, respond to, issue, or refuse to issue a certificate of correction.

The Office is, however, cognizant of the need for the public to have correct information about published patents and may therefore accept information about mistakes in patents from third parties and may issue certificates of correction based upon that information (whether or not it is accompanied by a specific request for issuance of a certificate of correction), § 1.322(a)(1)(iii). The Office intends to retain its discretion under 35 U.S.C. 254 and may not issue a certificate of correction even if a mistake is identified, particularly if the identified mistake is not a significant one that would justify the cost and time to issue a certificate of correction even if requested by the patentee or patentee's assignee.

When such information (about mistakes in patents) is received by the Office, the Office does not intend to correspond with third parties about the information they submitted either to inform the third parties of whether it intends to issue a certificate of correction or to issue a denial of any request for issuance of a certificate of correction that may accompany the information. The Office will confirm to the party submitting such information that such information has in fact been received by the Office if a stamped, self-addressed post card has been submitted. *See* MPEP 503.

The proposed amendment to the rule set forth in the Notice of Proposed Rulemaking was intended to exclude third parties from submitting requests for certificates of correction. The final rule language has been modified to

permit third parties to submit information about mistakes in patents, while clarifying that the Office need not act on that information or deny any accompanying request for issuance of a certificate of correction. The Office may choose to issue a certificate of correction on its own initiative based on the information supplied by a third party if it desires to do so. Accordingly, a fee for submission of the information by a third party has not been imposed.

The Office in implementing the rule (and in setting forth the implementation in the MPEP) will consider establishing guidelines for the types of mistakes that it will issue a certificate of correction for (as the rule does not represent a requirement on the Office but is permissive in nature as is 35 U.S.C. 254 that states that the ''Commissioner may issue a certificate of correction'' but does not require the Commissioner to do so).

Comment 73: One comment supported the proposed amendment as it clarified that third parties do not have a right to demand issuance of a certificate of correction. Two comments opposed the proposed amendment arguing that the public has a right to know about apparent errors, such as by a third party requesting a certificate of correction.

Response: The comments have been adopted in a compromise whereby the rule has been amended to clarify that third parties do not have a right to request issuance of a certificate of correction, but that the Office will accept information regarding mistakes about published patents and may issue at its own initiative, after notice to the patentee or the patentee's assignee, a certificate of correction for significant mistakes.

Section 1.323: Section 1.323 is amended to provide that the Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). The specific conditions set forth in the statute that were previously set forth in the rule have been replaced by a reference in the rule to the statute. Section 1.323 continues to provide that if the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 1.635.

Section 1.324: Section 1.324 has its title revised to reference the statutory basis for the rule, 35 U.S.C. 256. It is particularly important to recognize that 35 U.S.C. 256, the statutory basis for corrections of inventorship in patents under § 1.324, is stricter than 35 U.S.C. 116, the statutory basis for corrections of inventorship in applications under § 1.48. 35 U.S.C. 256 requires ''on application of all the parties and assignees,'' while 35 U.S.C. 116 does not have the same requirement. Thus, the flexibility under 35 U.S.C. 116, and § 1.48, wherein waiver requests under § 1.183 may be submitted (*e.g.*, MPEP 201.03 (under the heading ''Statement of Lack of Deceptive Intention'')), is not possible under 35 U.S.C. 256, and § 1.324.

Section 1.324(b)(1) is revised to eliminate the requirement for a statement from an inventor being deleted stating that the inventorship error occurred without deceptive intent. The revision is made to conform Office practice to judicial practice as enunciated in *Stark* v. *Advanced Magnetics, Inc.*, 119 F.3d 1551, 43 USPQ2d 1321 (Fed. Cir. 1997), which held that 35 U.S.C. 256 only requires an inquiry into the intent of a nonjoined inventor. The clause stating ''such error arose without deceptive intent on his part'' was interpreted by the court as being applicable only when there is an error where an inventor is not named and not when there is an error where a person is named as an inventor. While the decision recognized that the Office's former additional inquiry as to inventors named in error was appropriate under 35 U.S.C. 256 when read in conjunction with inequitable conduct standards, the Office no longer wishes to conduct an inquiry broader in scope than what would be conducted had the matter been raised in a court proceeding rather than under § 1.324.

Elimination in § 1.324 of the requirement for a statement from the inventor being deleted to correct an inventorship error in a patent is effective on the date of publication in the **Federal Register**.

Section 1.324(b)(2), which requires a statement from the current named inventors either agreeing to the requested change or stating that they have no disagreement to the requested change, is not revised. Section 1.324(b)(2) in combination with § 1.324(b)(1) ensures compliance with the requirement of the statute for application by all the parties, which requirement is separate from the requirement that certain parties address the lack of deceptive intent in the inventorship error.

Section 1.324(c) is a newly added paragraph to reference §§ 1.48, 1.497, and 1.634 for corrections of inventorship in national applications, international applications, and interferences, respectively.

Comment 74: Two comments state that when adding an inventor to a patent, a new oath or declaration under § 1.63 should be required for all inventors, including the inventor to be added. This is seen to be required by 35 U.S.C. 115.

Response: The comments are not adopted. The change proposed to § 1.324 was directed to statements of lack of deceptive intent and not to the advisability of adding a § 1.63 declaration requirement; however, the suggested change will be addressed substantively.

35 U.S.C. 115 requires an applicant to make an oath that he believes himself to be the original and first inventor of the invention for which he solicits a patent. The statute is directed to applicant's filing of an application for a patent. 35 U.S.C. 256 is directed to correction of the inventorship in an issued patent and does not explicitly require the execution of a new oath/declaration. The statute does require application of all the parties and assignees, a requirement that is met by the provisions of §§ 1.324(b)(1) and (b)(2) (for the inventors), and § 1.324(c) (for the assignees).

Moreover, the major utility of a § 1.63 declaration, as far as the Office is concerned, is providing the inventors specific recognition of the need to disclose material information to the Office to aid in examination of their applications. Corrections relating to § 1.324 are directed to changes in inventorship and cannot at that time cause further examination of the application notwithstanding any change in the inventorship viz-a-viz prior art.

Section 1.366: Section 1.366(c) is amended to continue to provide that a maintenance fee payment must include the patent number and the application number of the United States application for the patent on which the maintenance fee is being paid, and to further provide that if the payment includes identification of only the patent number (*i.e.*, does not identify the application number for the patent on which the maintenance fee is being paid), the Office may apply the payment to the patent identified by patent number in the payment or may return the payment. The Office requires the application number to detect situations in which a maintenance payment is submitted for the incorrect patent (*e.g.*, due to a transposition error in the patent number). Nevertheless, a significant number of maintenance fee payments contain only the patent number and not the application number for the patent on which the maintenance fee is being paid.

That the Office under § 1.366 may apply a maintenance fee payment where only the patent number is identified is effective on the date of publication in the **Federal Register**.

The change to § 1.366(c) will permit the Office to streamline processing of maintenance fee payments that lack the application number for the patent on which the maintenance fee is being paid. The Office intends to treat payments that do not contain both a patent number and application number as follows: *First*, a reasonable attempt will be made to contact the person who submitted the payment (patentee or agent) by telephone to confirm the patent number and application number of the patent for which the maintenance fee is being paid. *Second*, if such an attempt is not successful but the payment includes at least a patent number, the payment will be processed as a maintenance fee paid for the patent number provided, and the person who submitted the payment will be sent a letter informing him or her of the patent number and application number of the patent to which the maintenance fee was posted and given a period of time within which to file a petition under § 1.377 along with the petition fee if the maintenance fee was not posted to the patent for which the payment was intended. If the payment does not include a patent number (*e.g.*, includes only an application number), the payment will be returned to the person who submitted the payment.

Section 1.446: Section 1.446 is amended so that its refund provisions are consistent with the refund provisions of § 1.26. See discussion of § 1.26.

Section 1.497: Section 1.497(b)(2) has been amended in a manner consistent with § 1.64(b). Therefore, § 1.497(b)(2) is amended to refer to any supplemental oath or declaration and to provide that if the person making the oath or declaration is the legal representative, the oath or declaration shall state that the person is the legal representative and shall state the citizenship (pursuant to 35 U.S.C. 115 and 117), residence, and mailing address of the legal representative. In addition, § 1.497(b)(2) is amended to delete the requirement that the oath or declaration state the facts required by §§ 1.42, 1.43, and 1.47. These facts are not required to be in the § 1.497 oath or declaration and should be included in a separate paper or a petition under § 1.47 and be signed by a person with firsthand knowledge of the facts.

Section 1.497(d) provides for the situation in which an oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and § 1.497 names an inventive entity different from the inventive entity set forth in the international application. Section 1.497(d) is added to provide that such an oath or declaration must be accompanied by: (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*see* § 3.73(b)). Thus, naming a different inventive entity in an oath or declaration filed to enter the national stage under 35 U.S.C. 371 in an international application is not analogous to the filing of an oath or declaration to complete an application under 35 U.S.C. 111(a) (which operates to name the new inventive entity under §§ 1.41(a)(1) and 1.48(f)(1)), but is analogous to correction of inventorship under § 1.48(a).

Section 1.497(e) is added to explicitly state that the Office may require such other information as may be deemed appropriate under the particular circumstances surrounding the correction of inventorship. *See also* § 1.48(g).

Section 1.510: Section 1.510(b)(4) is amended to correspond to 1.173(a) as amended by the instant final rule, see the discussion as to the amendment of § 1.173. Section 1.510(b)(4) now sets forth the requirement that a copy of the patent for which reexamination is requested must be submitted in double column format, on single-sided sheets only. It is considered advantageous for the reexamination and reissue provisions to correspond with each other to the maximum extent possible, in order to eliminate confusion.

The double column format on single sided sheets requirement applies only to requests for reexamination filed on or after two months from the date of publication of the rule in the **Federal Register**.

Section 1.510(e) is provided with a conforming amendment to the amendment made to § 1.530. The reference in § 1.510(e) to ''§ 1.530(d)'' is changed to ''§ 1.530'' in view of the presence of amendment material in §§ 1.530(d) through (f).

Section 1.530: The title of § 1.530 has been amended to include procedures for changes in inventorship which can now be made during a reexamination proceeding.

Sections 1.530(d)(1), (d)(2), and (d)(6) are amended and rewritten as §§ 1.530(d)(1), (d)(2), and (d)(3). Sections 1.530(d)(3) and (d)(4) are redesignated as §§ 1.530(j) and (k). Section 1.530(d)(5) has been removed and replaced with a new § 1.530(d)(4) that cross-references § 1.52. Section 1.52 has been amended to extend the form requirements of applications to reexaminations proceedings where applicable.

Sections 1.530(e) through (i) are added, to provide a correspondence to §§ 1.173(b) *et seq.* as amended by the instant final rule, see the discussion as to the amendment of § 1.173. It is considered advantageous for the reexamination and reissue provisions to correspond with each other to the maximum extent possible, in order to eliminate confusion. The amendments make no substantive changes to reexamination practice.

Section 1.530(d)(1) is clarified to note that the paragraph applies whether or not an amendment is submitted on paper or compact disc pursuant to §§ 1.96 and 1.825.

Section 1.530(l) is added to make it clear that where the inventorship of a patent being reexamined is to be corrected, a petition for correction of inventorship which complies with § 1.324 must be submitted during the prosecution of the reexamination proceeding. If the petition under § 1.324 is granted, a certificate of correction indicating the change of inventorship will not be issued, because the reexamination certificate that will ultimately issue will contain the appropriate change-of-inventorship information (*i.e.*, the certificate of correction is, in effect, merged with the reexamination certificate). In the rare instances where the reexamination proceeding terminates but does not result in a reexamination certificate under § 1.570 (reexamination is vacated or the order for reexamination is denied), patentee may then request that the inventorship be corrected by a certificate of correction indicating the change of inventorship.

Section 1.550: Section 1.550(a) is amended to add references to newly added §§ 1.105, and 1.115.

Section 1.550(b) is amended to clarify that responses by the owner to any rejection may include further statements ''and/'' or proposed amendments or new claims.

Section 1.550(c) had been proposed to be revised into § 1.550(c)(1), containing the current subject matter of § 1.550(c), and a § 1.550(c)(2) containing a proposal to add an ''unintentional delay'' relief alternative (to that of ''unavoidable

delay'') for a reexamination proceeding that is terminated analogous to what is available for an application which is abandoned. The relief would have been provided in the form of an extension of time. The proposal will not be carried forward in view of § 4605(a) of the ''American Inventors Protection Act of 1999,'' which establishes unintentional delay relief for reexaminations. Section 4605(a) of the ''American Inventors Protection Act of 1999'' will become effective on November 29, 2000. The Office plans to provide unintentional delay relief for both ''*ex parte*'' and ''*inter partes*'' reexamination under § 4605(a) of the ''American Inventors Protection Act of 1999.''

Section 1.565: Section 1.565(a) is amended to change ''shall'' to ''must,'' as a conforming change with §§ 1.510(b)(4), 1.173(a)(1), and 1.178(b). This is not a change in substance.

Section 1.666: Section 1.666(b) is amended to change the reference to the fee set forth in ''§ 1.17(i)'' to the fee set forth in ''§ 1.17(h).'' This change is for consistency with the changes to §§ 1.17(h) and 1.17(i). See discussion of changes to §§ 1.17(h) and 1.17(i).

Section 1.720: Section 1.720(b) is amended to clarify that a patent extended under § 1.701 or § 1.790 would also be eligible for patent term extension. Section 1.720(g) is amended to clarify that an application for patent term extension may be timely filed during the period of an interim extension under § 1.790.

Section 1.730: Section 1.730 is amended to add new §§ 1.730(b), (c), and (d) which state who should sign the patent term extension application and what proof of authority may be required of the person signing the application. 35 U.S.C. 156 provides that an application for patent term extension must be filed by the patent owner of record or an agent of the patent owner. An agent of a patent owner could be either a licensee of the patent owner (for example, the party that sought permission from the Food and Drug Administration for permission to commercially use or sell a product, *i.e.*, the marketing applicant), or a registered attorney or agent. Section 1.730(b) explains that, if the application is submitted by the patent owner, the correspondence must be signed by the patent owner or a registered practitioner. Section 1.730(c) states that, if the application is submitted by an agent of the patent owner, the correspondence must be signed by a registered practitioner, and that the Office may require proof that the agent (*e.g.*, marketing applicant or registered practitioner) is authorized to act on behalf of the patent owner. This proof is generally in the form of a letter signed by the patent owner authorizing the marketing applicant to act on behalf of the patent owner in applying for term extension. Lastly, § 1.730(d) states that the Office may require proof of authority of a registered practitioner who signs the application for patent term extension on behalf of the patent owner or the agent of the patent owner. This proof of authority would generally be in the form of a power of attorney signed by the patent owner and establishing ownership of the patent by reference to an attached assignment document or the reel and frame number of the recorded assignment document as set forth in § 3.73(b).

Section 1.740: Currently, for each product claim, method of use claim, and method of manufacturing claim which reads on the approved product, a showing is required demonstrating the manner in which each applicable claim reads on the approved product. 35 U.S.C. 156 provides that a patent, which includes one of the following three categories of claims: An approved product, method of using an approved product, and method of manufacturing an approved product, shall be extended if certain conditions apply, and provides rights specific to the three claim categories. *See* 35 U.S.C. 156(a) and (b). 35 U.S.C. 156(d) requires that an application for extension identify each relevant claim of the patent but does not require an explanation of how each identified claim of the patent claims the approved product, or a method of use of an approved product, or a method of manufacturing an approved product. Often one patent contains many claims to an approved product, but once it is explained how one such claim of the patent claims the approved product, further explanation as to other claims of the patent which claim the approved product is redundant. It is similarly redundant to explain how multiple claims of the patent claim the method of using an approved product, or the method of manufacturing the approved product. In order to reduce the time required to prepare and review an application for patent term extension, the rule now provides that only one claim, in each of the three categories of claims must be explained but retains the statutory requirement that all claims relevant to each of the three categories of claims be identified.

Section 1.740(a)(9) is amended to provide that the application for patent term extension need only explain how *one* product claim of the patent claims the approved product, if there is a claim to the product. In addition, the application need only explain how one method of use claim of the patent claims the method of use of the approved product, if there is a claim to the method of use of the product. Lastly, the application need only explain how one claim of the patent claims the method of manufacturing the approved product, if there is a claim to the method of manufacturing the approved product. With this change, applicants for patent term extension should be able to reduce the time required to prepare the application since at the most only three claims have to be addressed rather than all the claims that read on the three categories. Each claim that claims the approved product, the method of use of the approved product, or the method of manufacturing the approved product is still required to be listed. *See* 35 U.S.C. 156(d)(1)(B).

The need under § 1.740(a)(9) for an explanation of how only one claim in a category reads on the approved product, or method of using, or method of manufacturing is effective on the date of publication in the **Federal Register**.

Sections 1.740(a)(10)(i) through (a)(10)(v) are amended to separate the text therein into aid in comprehension of the text.

Section 1.740(a)(14) is amended to add ''and'' after the semicolon, since the paragraph is now the next to last paragraph.

Section 1.740(a)(15) is amended to change the semicolon to a period.

Former § 1.740(a)(16) is moved to § 1.740(b), the number of copies is changed from two to three, and the express ''certification'' requirement is eliminated.

Former § 1.740(a)(17) is deleted as the requirement for an oath or declaration is being deleted in § 1.740(b).

Section 1.740(b) is amended to delete the requirement for an oath or declaration since the averments set forth in § 1.740(b) are implicit in the submission of an application for patent term extension and the signature on the application, and now contains subject matter transferred from former § 1.740(a)(16).

The deletion of the oath/declaration requirement in § 1.740(b) is effective on the date of publication in the **Federal Register**.

Section 1.740(c) is amended to increase the time period for reply to a notice of informality for an application for patent term extension from one month to two months, where the notice of informality does not set a time period.

Section 1.741: Section 1.741(a) is amended to clarify the language to

reference §§ 1.8 and 1.10 instead of referencing the rules and the titles of the rules. Section 1.741(a)(5) is amended to correct the format of the citation of the statute.

Section 1.741(b) is amended to provide that requests for review of a decision that the application for patent term extension is incomplete, or review of the filing date accorded to the application, must be filed as a petition under § 1.741 accompanied by the fee set forth in § 1.17(h), rather than a petition under § 1.181, that the petition must be filed within two months of the date of the notice, and that the extension of time provisions of § 1.136 apply, unless the notice indicates otherwise.

Section 1.760: Section 1.760 is amended to correct the spelling of ''Official Gazette.''

Section 1.780: Section 1.780, including the title, is amended to use terminology consistent with current practice by inserting the term ''order.''

Section 1.809: The following proposed changes to § 1.809 are being held in abeyance in view of the statutory mandate to consider recommendations of a required study (that will need to be done) prior to drafting regulatory changes affecting biological deposits (see discussion in § 1.136): Section 1.809(b) to change ''respond'' to ''reply'' (*see* § 1.111); Section 1.809(b)(1) to eliminate the language discussing payment of the issue fee; Section 1.809(c) to provide that if an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made, applicant will be notified and given a period of time within which the deposit must be made in order to avoid abandonment; Section 1.809(c) to provide that this time period is not extendable under § 1.136(a) or (b) (*see* § 1.136(c)); Section 1.809(c) to eliminate the language stating that failure to make a needed deposit will result in abandonment for failure to prosecute, because abandonment for failure to prosecute occurs by operation of law when an applicant fails to timely comply with such a requirement (*see* 35 U.S.C. 133).

Section 1.821: The Office indicated in the Notice of Proposed Rulemaking that the submission of sequence listings on paper is a significant burden on the applicants and the Office, and that it was considering changes to § 1.821 *et seq.* to: (1) permit a machine-readable submission of the nucleotide and/or amino acid sequence listings to be submitted in an appropriate archival medium; and (2) no longer require the voluminous paper submission of nucleotide and/or amino acid sequence listings.

Unlike a computer program listing appendix under § 1.96(c), a sequence listing under § 1.821 is part of the official disclosure of the application. Nevertheless, as § 4804(a) of the ''American Inventors Protection Act of 1999'' amended 35 U.S.C. 22 to provide that the Office ''may require papers filed in the Patent and Trademark Office to be printed, typewritten or on an electronic medium,'' the Office may accept or even require the electronic filing of material in a patent application.

As discussed above with regard to the amendments to § 1.96, CD-ROM and CD-R are the only practical electronic media of archival quality. The ''Sequence Listing'' on a compact disc, specified by § 1.52(e) and § 1.821(c), would serve as the ''original'' of the sequence listing, in lieu of the paper, yet offers the conveniences of small size and ease in viewing. Thus, the Office is specifically revising § 1.821 *et seq.* to permit applicants to submit the official copy of the sequence listing either on paper or on compact discs.

Though the sequence listing on the compact disc will not be entered into the text search system of the Office, it will be searchable through the usual facilities of the Automated Biotech Search System after the patent is issued or the application is published. It will be available to the public through channels already provided.

Section 1.821(c) is amended to provide that a ''Sequence Listing'' must be submitted either: (1) on paper, or (2) on a compact disc, as defined in the amended § 1.52(e) and as further specified in § 1.823(a)(2). For nucleotide and/or amino acid sequences, no change is made to the computer readable form (CRF) practice under § 1.821(e). The requirement for a paper copy of the sequences under § 1.821(c) is modified to allow applicants to satisfy § 1.821(c) with either a paper version as under the former practice or a submission on a CD–ROM or CD–R presented in duplicate. Any submission on CD–ROM or CD–R under § 1.821(c) is in addition to and not a replacement for the CRF required under § 1.821(e).

Section 1.821(e) concerning the computer readable form has been amended only as to matters of form. The compact disc submitted under § 1.821(c) may, if it contains no tables, be identical to the CRF submitted under § 1.821(e) and § 1.824, if that CRF is submitted on a compact disc. Even if the compact discs submitted under §§ 1.821(c) and (e) are identical, each compact disc submitted under § 1.821(c) must be submitted in duplicate, in addition to the CRF copy under § 1.821(e). However, the right of the applicant to submit the CRF on other media, such as magnetic disks, tape or Zip disks has been maintained.

Section 1.821(f) is amended for consistency with the provisions in § 1.821(c) that permit the official copy of the ''Sequence Listing'' required by § 1.821(c) to be a paper or a CD–ROM or CD–R.

Section 1.823: Section 1.823(a)(2) is added to set forth the new requirements if the ''Sequence Listing'' submitted pursuant to § 1.821(c) is on a compact disc.

Section 1.823(a)(2) is amended to provide that any ''Sequence Listing'' submitted under § 1.821(c) must conform to the specifications in § 1.52(e). The compact disc that is used to submit the ''Sequence Listing'' may also contain tables or text information from the figures when such sections of the application are also of inconvenient size (over 50 pages). The tables are often used as explanatory devices in the biotechnology applications to describe the sequences and their purposes and differences. They can be quite lengthy. As an example, a table of over 30,000 pages has been submitted.

Section 1.824: Section 1.824 is amended as to matters of form. Section 1.824(b) is amended only to recognize the acceptability of electronic ''Sequence Listings'' created under the MS-Windows operating system, as well as DOS and the other operating systems itemized in § 1.824(b)(2). Section 1.824(c) is amended to recognize the acceptability of compact discs, recordable (CD–Rs) as a submission medium, in addition to CD–ROMs. The generic term compact disc is indicated.

Section 1.825: Section 1.825(a) is amended to provide that any amendment to the compact disc copy of the ''Sequence Listing'' submitted pursuant to § 1.821(c) must be made by submission of a new compact disc containing a substitute ''Sequence Listing'' and that such amendments must be accompanied by a statement that indicates support for the amendment in the application-as-filed, and a statement that the new compact disc includes no new matter. Section 1.825(b) is amended to provide that any amendment to the CD–ROM or CD–R copy of the ''Sequence Listing'' pursuant to § 1.825(a) must be accompanied by a substitute copy of the computer readable form of the ''Sequence Listing'' required pursuant to § 1.821(e), including all previously submitted data with the amendment

incorporated therein, and accompanied by a statement that the computer readable form copy is the same as the new compact disc copy of the ''Sequence Listing.''

Comments received on this section are addressed above in the discussion of the change to § 1.96.

Part 3

Section 3.27: Section 3.27 is amended to eliminate separate §§ 3.27(a) and (b). The rule is also amended to eliminate the reference, under former § 3.27(b), to a document required by Executive Order 9424 which does not affect title, and to replace the reference to a ''petition'' with a reference to a ''request'' in conformance with the change to § 3.81.

Section 3.71: Section 3.71 is revised as discussed below. In conjunction with this revision, the section is broken into §§ 3.71(a) through (d), with each section being given a heading, in order to more clearly delineate the topics of the sections.

Section 3.71(a) clarifies that the assignee must be of record pursuant to § 3.71(c) in a U.S. national patent application or reexamination proceeding in order to conduct prosecution in place of the inventive entity (the inventors of the application) or any previous assignee that was entitled to conduct prosecution.

Section 3.71(b) is added to clarify and define what is meant by the § 3.71(a) assignee which may conduct the prosecution of a U.S. national application for a patent or reexamination proceeding.

A national patent application is owned by the inventor(s), the assignee(s) of the inventor(s), or some combination of the two. All parties having a portion of the ownership must act together in order to be entitled to conduct the prosecution.

If there is an assignee of the entire right, title and interest in the patent application, § 3.71(b)(1) states that the single assignee may act alone to conduct the prosecution of an application.

If there is no assignee of the entire right, title and interest of the patent application, then two possibilities exist: *First:* the application is not assigned; thus, ownership resides solely in the inventor(s) (*i.e.,* the applicant(s)). In this situation, § 3.71 does not apply since there is no assignee, and the single inventor, or the combination of all the joint inventors, is needed to conduct the prosecution of an application. *Second:* the application has been assigned; thus, there is at least one ''partial assignee.'' As pointed out in § 3.71(b)(2), a partial assignee is any assignee of record who has less than the entire right, title and interest in the application (or patent being reexamined). The application will be owned by the combination of all partial assignees and all inventors who have not assigned away their right, title, and interest in the application. Section 3.71(b)(2) points out that where at least one inventor retains an ownership interest together with the partial assignee(s), the combination of all partial assignees and all inventors retaining ownership interest is needed to conduct the prosecution of an application. Where no inventor retains an ownership interest, the combination of all partial assignees is needed to conduct the prosecution of an application.

To illustrate this, note as follows. Inventors A and B invent a process and file their application. Inventors A and B together may conduct prosecution. Inventor A then assigns his/her rights in the application to Corporation X. As soon as Corporation X (now a partial assignee) is made of record in the application as a partial assignee (by filing a statement pursuant to § 3.73(b) stating fifty percent ownership), Corporation X and Inventor B together may conduct prosecution. Corporation X and Inventor B then both assign their rights in the application to Corporation Y. As soon as Corporation Y (now an assignee of the entire right, title and interest) is made of record in the application as the assignee (by filing a statement pursuant to § 3.73(b) stating one-hundred percent ownership), Corporation Y may, by itself, conduct prosecution.

This definition of the assignee would apply wherever the assignee is permitted to take action in the prosecution of an application for patent or reexamination proceeding.

Section 3.71(c) defines the meaning of the term ''of record'' used in § 3.71(b). An assignee is made of record in an application by filing a statement which is in compliance with § 3.73(b). The statement must be signed by a party authorized to act on behalf of the assignee as defined in § 3.73(b)(2). *See also* MPEP 324. Note that the assignee being made ''of record'' in an application is different from the recording of an assignment in the assignment records of the Office pursuant to § 3.11. Recording in the assignment records is not sufficient to establish a new assignee in an individual application or reexamination proceeding; a § 3.73(b) statement must be filed in the individual application or proceeding to establish the new assignee for that application or reexamination proceeding.

Sections 3.71(a) through (c) have been drafted to allow for the situation where an assignee takes action in the prosecution of a reexamination proceeding (in addition to that where a patent application is involved). In a reexamination proceeding, the assignee must have the entire right, title and interest in the *patent* upon which reexamination is based.

Section 3.71(d), concerning trademarks, expands the list of actions an assignee may take or request. Specifically, an assignee may also rely on its Federal trademark application or registration when filing papers against a third party. This subsection also corrects the inappropriate use of the term ''prosecution'' when referring to maintaining a registered trademark.

In various places in § 3.71, ''national'' has been added before ''application.'' Section 3.71 is directed to national applications as defined in § 1.9(a)(1) and not to international (PCT) applications. In an international (PCT) application the assignee is often the applicant for some, or all, of the designated states (except the U.S.) and may control prosecution as the applicant. Section 3.71 would apply to international applications after entry into the U.S. national stage under 35 U.S.C. 371.

Section 3.73: Section 3.73(a), the second sentence is revised to include a trademark registration, in addition to a trademark application which is currently recited. The sentence has been revised to read: ''The original applicant is presumed to be the owner of a trademark application or registration, unless there is an assignment.''

Section 3.73(b) is revised for clarity and paragraph formatting, creating §§ 3.73(b)(1) and (b)(2). Section 3.73(b)(1) clarifies that the statement establishing ownership must explicitly identify the assignee (by adding the language ''a signed statement identifying the assignee''). Section 3.73(b)(1) makes it clear that while the submission establishing ownership is separate from, and in addition to, the specific action taken by the assignee (*e.g.*, appointing a new attorney), the two may be presented together as part of the same paper. This clarification has been effected by adding ''The establishment of ownership by the assignee may be combined with the paper that requests or takes the action.''

Previously, § 3.73(b) required that the submission (statement) establishing ownership ''must be signed by a party authorized to act on behalf of the assignee.'' Section 3.73(b)(2) now clarifies what is acceptable to show that the party signing the submission is authorized to act on behalf of the

assignee. The submission could include a statement that the party signing the submission is authorized to act on behalf of the assignee, pursuant to § 3.73(b)(2)(i). Alternatively, the submission could be signed by a person having apparent authority to sign on behalf of the assignee, *e.g.*, an officer of the assignee, pursuant to § 3.73(b)(2)(ii).

In the first case, the statement that the party signing the submission is authorized to act on behalf of the assignee could be an actual statement included in the text of the submission that the signing person ''is authorized to act on behalf of the assignee.'' Alternatively, it could be in the form of a resolution by the organization or business entity owning the property (*e.g.*, a corporate resolution, a partnership resolution) included with the submission.

In the second case, the title of the person signing must be given in the submission, or in some other paper of record, and it must be a title which empowers the person to act on behalf of the assignee. The president, vice-president, secretary, treasurer, and chairman of the board of directors are presumed to have authority to act on behalf of the organization. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. A title such as manager, director, administrator, or general counsel does *not* clearly set forth that the person is an officer of the organization, and as such, does *not* provide a presumption of authority to sign the statement on behalf of the assignee. A power of attorney from the inventors or the assignee to a practitioner to prosecute an application does not make that practitioner an official of an assignee and does not empower that practitioner to sign the statement on behalf of the assignee.

New § 3.73(c)(1) requires that the submission establishing ownership by the assignee must be submitted prior to, or at the same time, as the paper requesting or taking action is submitted. If the submission establishing ownership is not present, the action sought to be taken will not be given effect. If the submission establishing ownership is submitted at a later date, that date will be the date of the request for action or action taken.

New § 3.73(c)(2) points out that for patents, if an assignee of less than the entire right, title and interest (*i.e.*, a partial assignee) fails to indicate in the submission the extent (*e.g.*, by percentage) of its ownership interest, the Office may refuse to accept the submission as an establishment of ownership.

Section 3.81: Section 3.81 was proposed to be amended to eliminate entirely the provisions of § 3.81(b), which provide a petition remedy to have the patent issue to the assignee where a petition for such issuance is submitted after the date of payment of the issue fee. The Office is not proceeding with this proposal in this final rule but it is eliminating the requirement for a petition.

Section 3.81 has been amended to reformat the section by removing material from § 3.81(a) relating to partial assignees and placing it in new § 3.81(c) that applies to both §§ 3.81(a) and (b). Titles for §§ 3.81(a) through (c) have been added.

Section 3.81 has been amended to permit proof of the application's assignment to be submitted with or after the payment of the issue fee so that a patent may issue in the name(s) of the assignee(s) consistent with the application's assignment. The need for a petition after the issue fee has been paid has been eliminated as the Office intends to comply with requests to issue patents in the names of assignee(s). Obviously, the extent to which the Office can comply with such requests will depend upon the time frames of when the request is filed, the time it takes to match the request with the file, and when the application is due to issue as a patent.

Section 3.81 formerly required that the assignment had to have been recorded among the Office's assignment records before a patent could be issued to the assignee(s). An applicant could comply with this requirement by submitting the assignment along with directions to record it among the Office's assignment records at the same time that the issue fee and the PTOL–85B form are filed. Revised § 3.81 now provides another option. It is now permitted to rely on a § 3.73(b) statement, which would require that a copy of the assignment be supplied but the assignment would not have to be recorded. Thus, if the assignment is already recorded in the Office, applicant would probably not choose the § 3.73(b) option. Where the § 3.73(b) option is chosen, reliance may be had on a § 3.73(b) statement previously made of record in the application (if the statement is still accurate at the time the request is filed), or the § 3.73(b) statement may be filed with the issue fee and the PTOL–85B filing.

This amendment is consistent with current practice under §§ 3.71 and 3.73 for other matters, where a statement rather than a recording is required. Adding the option of relying on a § 3.73(b) statement and the elimination of the ''petition'' requirement should result in faster processing of § 3.81 requests by the Office of Patent Publications, particularly as a separate assignment paper, if submitted at the time the issue fee is paid, would not need to be sent to Assignment Division for recording.

Part 5

Section 5.1: Section 5.1 is amended to locate its current text in § 5.1(a), and to remove the term ''Assistant'' in the title of the Office official who should be the addressee.

Section 5.1 is also amended to add a § 5.1(b) to clarify that ''application'' as used in Part 5 includes provisional applications filed under 35 U.S.C. 111(b) (§ 1.9(a)(2)), nonprovisional applications filed under 35 U.S.C. 111(a) or entering the national stage from an international application after compliance with 35 U.S.C. 371 (§ 1.9(a)(3)), or international applications filed under the Patent Cooperation Treaty prior to entering the national stage of processing (§ 1.9(b)).

Section 5.1 is also amended to add a § 5.1(c) to state current practice that: (1) Patent applications and documents relating thereto that are national security classified (*see* § 1.9(i)) and contain authorized national security markings (*e.g.*, ''Confidential,'' ''Secret'' or ''Top Secret'') are accepted by the Office; and (2) national security classified documents filed in the Office must be either hand-carried to Licensing and Review or mailed to the Office in compliance with § 5.1(a).

Section 5.1 is also amended to add a § 5.1(d) to provide that: (1) The applicant in a national security classified patent application must obtain a secrecy order pursuant to § 5.2(a); (2) if a national security classified patent application is filed without a notification pursuant to § 5.2(a), the Office will set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to § 5.2(a), or the applicant must submit evidence of a good faith effort to obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency in order to prevent abandonment of the application; and (3) if evidence of a good faith effort to obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency is submitted by the applicant within the time period set by the Office, but the application has not been declassified or placed under a secrecy order pursuant to § 5.2(a), the Office

will again set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to § 5.2(a), or the applicant must submit evidence of a good faith effort to again obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency in order to prevent abandonment of the application. Section 5.1(d) sets forth the treatment of national security classified applications that is currently set forth in MPEP 130.

Section 5.1 is also amended to add a § 5.1(e) to provide that a national security classified patent application will not be allowed pursuant to § 1.311 of this chapter until the application is declassified and any secrecy order pursuant to § 5.2(a) has been rescinded.

Section 5.1 is also amended to add a § 5.1(f) to clarify that applications on inventions not made in the United States and on inventions in which a U.S. Government defense agency has a property interest will not be made available to defense agencies.

Section 5.2: Section 5.2(c) is added to provide that: (1) An application disclosing any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2(a) also falls within the scope of such secrecy order; (2) any such application that is pending before the Office must be promptly brought to the attention of Licensing and Review, unless such application is itself under a secrecy order pursuant to § 5.2(a); and (3) any subsequently filed application containing any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2(a) must either be hand-carried to Licensing and Review or mailed to the Office in compliance with § 5.1(a).

Section 5.12: Section 5.12(b) is amended to require that the fee set forth in § 1.17(h) is required for any petition under § 5.12 for a foreign filing license. As a practical matter, all petitions under § 5.12 are treated on an expedited basis. Therefore, it is appropriate to require the fee set forth in § 1.17(h) for all petitions under § 5.12.

Part 10

The title has been amended to reflect the name change of the Office by the addition of ''United States.''

Section 10.23: Section 10.23(c)(11) is amended to add the phrase ''[e]xcept as permitted by § 1.52(c)'' for consistency with the amendment to § 1.52(c).

Classification

Administrative Procedure Act: The change to § 1.181 was not included in the Notice of Proposed Rulemaking. This change to the rules of practice simply sets a time period within which any petition must be filed to avoid being dismissed as untimely. Therefore, this change concerns only rules of Office procedure, and prior notice and an opportunity for public comment for this change is not required pursuant to 5 U.S.C. 553(b)(A), or any other law. In addition, pursuant to the authority at 5 U.S.C. 553(d)(1), the changes to §§ 1.27, 1.78, 1.131, 1.132, 1.137, 1.152, 1.155, 1.324, 1.366, 1.740, and 1.760, and the removal of § 1.44, may be made effective immediately because they relieve restrictions in the rules of practice.

Regulatory Flexibility Act: The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). In furtherance of the Patent Business Goals, the Office is proposing changes to the rules of practice to eliminate unnecessary formal requirements, streamline the patent application process, and simplify and clarify procedures. In streamlining this process, the Office will be able to issue a patent in a shorter time by eliminating formal requirements that must be performed by the applicant, his or her representatives and the Office. All applicants will benefit from a reduced overall cost to them for receiving patent protection and from a faster receipt of their patents. In addition, small entities will benefit from the proposed changes to the requirements for establishing small entity status under § 1.27 for purposes of paying reduced patent fees under 35 U.S.C. 41(h). The currently used small entity statement forms are proposed to be eliminated. Small entity status would be established at any time by a simple assertion of entitlement to small entity status. A simpler procedure to establish small entity status would reduce processing time with the Office and would be a benefit to small entity applicants as it would eliminate the time-consuming and aggravating processing requirements that are mandated by the former rules.

Executive Order 13132: This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866: This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act: This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice of proposed rulemaking have been reviewed and previously approved by OMB under OMB control numbers: 0651–0016, 0651–0020, 0651–0021, 0651–0022, 0651–0024, 0651–0027, 0651–0031, 0651–0032, 0651–0033, 0651–0034, and 0651–0035.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the United States Patent and Trademark Office submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control numbers 0651–0031, 0651–0032, and 0651–0035. The Office submitted these information collections to OMB for its review and approval because the following changes in this final rule affect the information collection requirements associated with the information collections under OMB control numbers 0651–0031, 0651–0032, and 0651–0035: (1) The change to § 1.27 and permits an applicant to establish small entity status in an application by a simple assertion of entitlement to small entity status (without a statement having a formalistic reference to § 1.9 or a standard form (PTO/SB/09/10/11/12)); (2) the change to §§ 1.55, 1.63 and 1.78 eliminates the need for an applicant using the application data sheet (§ 1.76) to provide priority claims in the oath or declaration or specification; (3) the change to § 1.96 requires applicants to submit lengthy computer listings on a CD–ROM or CD–R (rather than microfiche); (4) the change to §§ 1.821, 1.823, and 1.825 permits applicants to submit sequence listings on a CD–ROM or CD–R (rather than paper); and (5) the change to § 1.155 allows an applicant to seek expedited examination of a design application by filing a request for expedited examination.

As discussed above, this final rule also involves currently approved information collections under OMB control numbers: 0651–0016, 0651–0020, 0651–0021, 0651–0022, 0651–0024, 0651–0027, 0651–0033, 0651–0034, and 0651–0037. The Office did not resubmit information collection packages to OMB for its review and approval of these information collections because the changes in this final rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this final rule is to raise the efficiency and effectiveness of the Office's business processes to make the Office a more business-like agency and increase the level of the Office's service to the public.

OMB Number: 0651–0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Type of Review: Approved through December of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 326,101.

Estimated Time Per Response: 0.08 hour.

Estimated Total Annual Burden Hours: 26,099 hours.

Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through September of 2001.

Affected Public: Individuals or Households, Businesses or Other For-Profit, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 57.

Estimated Time Per Response: 22.8 hours.

Estimated Total Annual Burden Hours: 1,302 hours.

Needs and Uses: The information supplied to the Office by an applicant seeking a patent term extension is used by the Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, and withdraw patent term extensions. If there are multiple patents, the applicant can designate which patents should be extended. An applicant can also declare their eligibility to apply for a patent term extension.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.

Type of Review: Approved through August of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

Estimated Number of Respondents: 102,950.

Estimated Time Per Response: 0.9538 hour.

Estimated Total Annual Burden Hours: 98,195 hours.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0022.

Title: Deposit of Biological Materials for Patent Purposes.

Form Numbers: None.

Type of Review: Approved through December of 2000.

Affected Public: Individuals or Households, State or Local Governments, Farms, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

Estimated Number of Respondents: 3,300.

Estimated Time Per Response: 1.0 hour.

Estimated Total Annual Burden Hours: 3,300 hours.

Needs and Uses: Information on depositing of biological materials in depositories is required for (1) Office determination of compliance with the patent statute where the invention sought to be patented relies on biological material subject to deposit requirement, which includes notifying interested members of the public where to obtain samples of deposits, and (2) depositories desiring to be recognized as suitable by the Office.

OMB Number: 0651–0024.

Title: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures.

Form Numbers: None.

Type of Review: Approved through November of 1999. Resubmitted on April 6, 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, and Federal Government.

Estimated Number of Respondents: 4,600.

Estimated Time Per Response: 1.33 hours.

Estimated Total Annual Burden Hours: 6,133 hours.

Needs and Uses: This information is used by the Office during the examination process, the public and the patent bar. The Patent and Trademark Office also participates with the EPO and JPO in a Trilateral Sequence Exchange project to facilitate the international exchange of published sequence data.

OMB Number: 0651–0027.

Title: Changes in Patent and Trademark Assignment Practices.

Form Numbers: PTO–1618 and PTO–1619, PTO/SB/15/41.

Type of Review: Approved through May of 2002.

Affected Public: Individuals or Households and Businesses or Other For-Profit Institutions.

Estimated Number of Respondents: 209,040.

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 104,520 hours.

Needs and Uses: The Office records about 209,040 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,040,630.

Estimated Time Per Response: 0.39 hours.

Estimated Total Annual Burden Hours: 788,421 hours.

Needs and Uses: During the processing of an application for a

patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 344,100.

Estimated Time Per Response: 8.7 hours.

Estimated Total Annual Burden Hours: 2,994,160 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Approved through September of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 135,250.

Estimated Time Per Response: 0.325 hour.

Estimated Total Annual Burden Hours: 43,893 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.

Title: Secrecy/License to Export.

Form Numbers: None.

Type of Review: Approved through January of 2001.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,187.

Estimated Time Per Response: 0.67 hour.

Estimated Total Annual Burden Hours: 1,476 hours.

Needs and Uses: In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patent in foreign countries.

OMB Number: 0651–0035.

Title: Address-Affecting Provisions.

Form Numbers: PTO/SB/81–84/121–125.

Type of Review: Approved through October of 2002.

Affected Public: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 263,520.

Estimated Time Per Response: 0.05 hour.

Estimated Total Annual Burden Hours: 13,386 hours.

Needs and Uses: Under existing law, a patent applicant or assignee may appoint, revoke or change a representative to act in a representative capacity. Also, an appointed representative may withdraw from acting in a representative capacity. This collection includes the information needed to ensure that Office correspondence reaches the appropriate individual.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1, 3, 5, and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(b) Since each file must be complete in itself, a separate copy of every paper to be filed in a patent or trademark

application, patent file, trademark registration file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding.

(c) Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

* * * * *

3. Section 1.6 is amended by revising paragraph (d)(9) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(9) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under § 1.621; a transcript of a deposition under § 1.676 or of interrogatories, or cross-interrogatories; or an evidentiary record and exhibits under § 1.653.

* * * * *

4. Section 1.9 is amended by removing and reserving paragraphs (c) through (f), and adding a new paragraph (i) to read as follows:

§ 1.9 Definitions.

* * * * *

(i) National security classified as used in this chapter means specifically authorized under criteria established by an Act of Congress or Executive Order to be kept secret in the interest of national defense or foreign policy and, in fact, properly classified pursuant to such Act of Congress or Executive Order.

* * * * *

5. Section 1.12 is amended by revising paragraph (c)(1) to read as follows:

§ 1.12 Assignment records open to public inspection.

* * * * *

(c) * * *

(1) Be in the form of a petition including the fee set forth in § 1.17(h); or

* * * * *

6. Section 1.14 is revised to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications are generally preserved in confidence pursuant to 35 U.S.C. 122. Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) *Status information* is:

(i) Whether the application is pending, abandoned, or patented; and

(ii) The application ''numerical identifier'' which may be:

(A) The eight digit application number (the two digit series code plus the six digit serial number); or

(B) The six digit serial number and either the filing date of the national application, the international filing date, or the date of entry into the national stage.

(2) *Access* is defined as providing the application file for review and copying of any material.

(b) *When status information may be supplied.* Status information of an application may be supplied by the Office to the public if any of the following apply:

(1) Access to the application is available pursuant to paragraph (e) of this section;

(2) The application is referred to by its numerical identifier in a published patent document (*e.g.*, a U.S. patent or a foreign application or patent publication) or in a U.S. application open to public inspection (§ 1.11(b) or paragraph (e)(2)(i) of this section); or

(3) The application is a published international application in which the United States of America has been indicated as a designated state.

(4) The application claims the benefit of the filing date of an application for which status information may be provided pursuant to paragraphs (b)(1) through (b)(3) of this section.

(c) *Copy of application-as-filed.* If a U.S. patent incorporates by reference a pending or abandoned application, a copy of that application-as-filed may be provided to any person upon written request accompanied by the fee set forth in § 1.19(b)(1).

(d) *Power to inspect a pending or abandoned application.* Access to an application may be provided to any person if the application file is available, and the application contains written authority (*e.g.*, a power to inspect) granting access to such person. The written authority must be signed by:

(1) An applicant;

(2) An attorney or agent of record;

(3) An authorized official of an assignee of record (made of record pursuant to § 3.71 of this chapter); or

(4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.494 or § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

(e) *Public access to a pending or abandoned application.* Access to an application may be provided to any person if a written request for access is submitted, the application file is available, and any of the following apply:

(1) The application is open to public inspection pursuant to § 1.11(b); or

(2) The application is abandoned, it is not within the file jacket of a pending application under § 1.53(d), and it is referred to:

(i) In a U.S. patent; or

(ii) In another U.S. application which is open to public inspection either pursuant to § 1.11(b) or paragraph (e)(2)(i) of this section.

(f) *Applications reported to Department of Energy.* Applications for patents which appear to disclose, purport to disclose or do disclose inventions or discoveries relating to atomic energy are reported to the Department of Energy, which Department will be given access to the applications. Such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or is an invention or discovery, or that such application in fact discloses subject matter in categories specified by 42 U.S.C. 2181(c) and (d).

(g) *Decisions by the Commissioner or the Board of Patent Appeals and Interferences.* Any decision by the Commissioner or the Board of Patent Appeals and Interferences which would not otherwise be open to public inspection may be published or made available for public inspection if:

(1) The Commissioner believes the decision involves an interpretation of patent laws or regulations that would be of precedential value; and

(2) The applicant, or a party involved in an interference for which a decision was rendered, is given notice and an opportunity to object in writing within two months on the ground that the decision discloses a trade secret or other confidential information. Any objection must identify the deletions in the text of

the decision considered necessary to protect the information, or explain why the entire decision must be withheld from the public to protect such information. An applicant or party will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of a decision are made public under this paragraph over his or her objection.

(h) *Publication pursuant to § 1.47.* Information as to the filing of an application will be published in the *Official Gazette* in accordance with §§ 1.47(a) and (b).

(i) *International applications.* Copies of an application file for which the United States acted as the International Preliminary Examining Authority, or copies of a document in such an application file, will be furnished in accordance with Patent Cooperation Treaty (PCT) Rule 94.2 or 94.3, upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

(j) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to the application.

7. Section 1.17 is amended by revising paragraphs (h), (i), (k), (l), (m), (p), and (q) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under one of the following sections which refers to this paragraph—$130.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.53(e)—to accord a filing date.
§ 1.59—for expungement and return of information.
§ 1.84—for accepting color drawings or photographs.
§ 1.91—for entry of a model or exhibit.
§ 1.102—to make an application special.
§ 1.103(a)—to suspend action in an application.
§ 1.182—for decision on a question not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(b)—for access to an interference settlement agreement.
§ 1.666(c)—for late filing of an interference settlement agreement.
§ 1.741(b)—to accord a filing date to an application for extension of a patent term.
§ 5.12—for expedited handling of a foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for a retroactive license.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph—$130.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.
§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.
§ 1.48—for correcting inventorship, except in provisional applications.
§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.
§ 1.53(c)(3)—to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b).
§ 1.55—for entry of late priority papers.
§ 1.103(b)—for requesting limited suspension of action in continued prosecution application (§ 1.53(d)).
§ 1.103(c)—for requesting limited suspension of action after a request for continued examination (§ 1.114).
§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.
§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

(k) For filing a request for expedited examination under § 1.155(a)—$900.00

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, or the unavoidably delayed payment of the issue fee under 35 U.S.C. 151 (§ 1.137(a)):

By a small entity (§ 1.27(a))—$55.00

By other than a small entity—$110.00

(m) For filing a petition for the revival of an unintentionally abandoned application or the unintentionally delayed payment of the issue fee under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—$620.00

By other than a small entity—$1,240.00

* * * * *

(p) For submission of an information disclosure statement under § 1.97(c) and (d)—$180.00

(q) Processing fee for taking action under one of the following sections which refers to this paragraph—$50.00

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.
§ 1.48—for correction of inventorship in a provisional application.
§ 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

* * * * *

8. Section 1.19 is amended by revising its introductory text and paragraphs (a) and (b) and removing and reserving paragraphs (g) and (h) to read as follows:

§ 1.19 Document supply fees.

The United States Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated. The copies will be in black and white unless the original document is in color, a color copy is requested and the fee for a color copy is paid.

(a) Uncertified copies of patents:

(1) Printed copy of the paper portion of a patent, including a design patent, statutory invention registration, or defensive publication document:

(i) Regular service—$3.00

(ii) Overnight delivery to Office Box or overnight facsimile—$6.00

(iii) Expedited service for copy ordered by expedited mail or facsimile delivery service and delivered to the customer within two workdays—$25.00

(2) Printed copy of a plant patent in color—$15.00

(3) Color copy of a patent (other than a plant patent) or statutory invention registration containing a color drawing—$25.00

(b) Certified and uncertified copies of Office documents:

(1) Certified or uncertified copy of the paper portion of patent application as filed:

(i) Regular service—$15.00

(ii) Expedited regular service—$30.00

(2) Certified or uncertified copy of paper portion of patent-related file wrapper and contents:

(i) File wrapper and paper contents of 400 or fewer pages—$200.00

(ii) Additional fee for each additional 100 pages or portion thereof—$40.00

(iii) Additional fee for certification—$25.00

(3) Certified or uncertified copy on compact disc of patent-related file-wrapper contents that were submitted on compact disc:

(i) First compact disc in a single order—$55.00

(ii) Each additional compact disc in the single order of paragraph (b)(3)(i) of this section—$15.00

(4) Certified or uncertified copy of Office records, per document except as otherwise provided in this section—$25.00

(5) For assignment records, abstract of title and certification, per patent—$25.00

* * * * *

9. Section 1.22 is amended by revising paragraph (b) to read as follows:

§ 1.22 Fee payable in advance.

* * * * *

(b) All fees paid to the United States Patent and Trademark Office must be itemized in each individual application, patent, trademark registration file, or other proceeding in such a manner that it is clear for which purpose the fees are paid. The Office may return fees that are not itemized as required by this paragraph. The provisions of § 1.5(a) do not apply to the resubmission of fees returned pursuant to this paragraph.

* * * * *

10. Section 1.25 is amended by revising paragraph (b) to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in § 1.16 to § 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee. An authorization to charge fees under § 1.16 in an application filed under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination.

* * * * *

11. Section 1.26 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 1.26 Refunds.

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in § 1.28(a). If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

* * * * *

12. Section 1.27 is revised to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

(a) *Definition of small entities.* A small entity as used in this chapter means any party (person, small business concern, or nonprofit organization) under paragraphs (a)(1) through (a)(3) of this section.

(1) *Person.* A person, as used in paragraph (c) of this section, means any inventor or other individual (*e.g.*, an individual to whom an inventor *has* transferred some rights in the invention), who *has not* assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention. An inventor or other individual who *has* transferred some rights, or is under an obligation to transfer some rights in the invention to one or more parties, can also qualify for small entity status if all the parties who have had rights in the invention transferred to them also qualify for small entity status either as a person, small business concern, or nonprofit organization under this section.

(2) *Small business concern.* A small business concern, as used in paragraph (c) of this section, means any business concern that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization.

(ii) Meets the standards set forth in 13 CFR part 121 to be eligible for reduced patent fees. Questions related to standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, S.W., Washington, D.C. 20416.

(3) *Nonprofit Organization.* A nonprofit organization, as used in paragraph (c) of this section, means any nonprofit organization that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify as a person, small business concern, or a nonprofit organization, and

(ii) Is either:

(A) A university or other institution of higher education located in any country;

(B) An organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));

(C) Any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or

(D) Any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (a)(3)(ii)(B) of this section or (a)(3)(ii)(C) of this section if it were located in this country.

(4) *License to a Federal agency.* (i) For persons under paragraph (a)(1) of this section, a license to the Government resulting from a rights determination under Executive Order 10096 does not constitute a license so as to prohibit claiming small entity status.

(ii) For small business concerns and nonprofit organizations under paragraphs (a)(2) and (a)(3) of this section, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license for the purposes of paragraphs (a)(2)(i) and (a)(3)(i) of this section.

(b) *Establishment of small entity status permits payment of reduced fees.* A small entity, as defined in paragraph (a) of this section, who has properly asserted entitlement to small entity status pursuant to paragraph (c) of this section will be accorded small entity status by the Office in the particular application or patent in which entitlement to small entity status was asserted. Establishment of small entity status allows the payment of certain reduced patent fees pursuant to 35 U.S.C. 41(h).

(c) *Assertion of small entity status.* Any party (person, small business concern or nonprofit organization) should make a determination, pursuant to paragraph (f) of this section, of entitlement to be accorded small entity status based on the definitions set forth in paragraph (a) of this section, and must, in order to establish small entity status for the purpose of paying small entity fees, actually make an assertion of entitlement to small entity status, in the manner set forth in paragraphs (c)(1) or (c)(3) of this section, in the application or patent in which such small entity fees are to be paid.

(1) *Assertion by writing.* Small entity status may be established by a written assertion of entitlement to small entity status. A written assertion must:

(i) Be clearly identifiable;

(ii) Be signed (see paragraph (c)(2) of this section); and

(iii) Convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent. While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

(2) *Parties who can sign and file the written assertion.* The written assertion can be signed by:

(i) One of the parties identified in § 1.33(b) (*e.g.*, an attorney or agent registered with the Office), § 3.73(b) of this chapter notwithstanding, who can also file the written assertion;

(ii) At least one of the individuals identified as an inventor (even though a § 1.63 executed oath or declaration has not been submitted), notwithstanding § 1.33(b)(4), who can also file the written assertion pursuant to the exception under § 1.33(b) of this part; or

(iii) An assignee of an undivided part interest, notwithstanding §§ 1.33(b)(3) and 3.73(b) of this chapter, but the partial assignee cannot file the assertion without resort to a party identified under § 1.33(b) of this part.

(3) *Assertion by payment of the small entity basic filing or basic national fee.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), (f), (g), (h), or (k), or one of the small entity basic national fees set forth in §§ 1.492(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

(i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in § 1.16(e), or § 1.16(l).

(ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent.

(4) *Assertion required in related, continuing, and reissue applications.* Status as a small entity must be specifically established by an assertion in each related, continuing and reissue application in which status is appropriate and desired. Status as a small entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The refiling of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new assertion as to continued entitlement to small entity status for the continuing or reissue application.

(d) *When small entity fees can be paid.* Any fee, other than the small entity basic filing fees and the small entity national fees of paragraph (c)(3) of this section, can be paid in the small entity amount only if it is submitted with, or subsequent to, the submission of a written assertion of entitlement to small entity status, except when refunds are permitted by § 1.28(a).

(e) *Only one assertion required.* (1) An assertion of small entity status need only be filed once in an application or patent. Small entity status, once established, remains in effect until changed pursuant to paragraph (g)(1) of this section. Where an assignment of rights or an obligation to assign rights to other parties who are small entities occurs subsequent to an assertion of small entity status, a second assertion is not required.

(2) Once small entity status is withdrawn pursuant to paragraph (g)(2) of this section, a new written assertion is required to again obtain small entity status.

(f) *Assertion requires a determination of entitlement to pay small entity fees.* Prior to submitting an assertion of entitlement to small entity status in an application, including a related, continuing, or reissue application, a determination of such entitlement should be made pursuant to the requirements of paragraph (a) of this section. It should be determined that all parties holding rights in the invention qualify for small entity status. The Office will generally not question any assertion of small entity status that is made in accordance with the requirements of this section, but note paragraph (h) of this section.

(g)(1) *New determination of entitlement to small entity status is needed when issue and maintenance fees are due.* Once status as a small entity has been established in an application or patent, fees as a small

entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due.

(2) *Notification of loss of entitlement to small entity status is required when issue and maintenance fees are due.* Notification of a loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity as defined in paragraph (a) of this section is no longer appropriate. The notification that small entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the small entity amount is not sufficient notification that small entity status is no longer appropriate.

(h) *Fraud attempted or practiced on the Office.*

(1) Any attempt to fraudulently establish status as a small entity, or pay fees as a small entity, shall be considered as a fraud practiced or attempted on the Office.

(2) Improperly, and with intent to deceive, establishing status as a small entity, or paying fees as a small entity, shall be considered as a fraud practiced or attempted on the Office.

13. Section 1.28 is revised to read as follows:

§ 1.28 Refunds when small entity status is later established; how errors in small entity status are excused.

(a) *Refunds based on later establishment of small entity status.* A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

(b) *Date of payment.* (1) The three-month period for requesting a refund, pursuant to paragraph (a) of this section, starts on the date that a full fee has been paid;

(2) The date when a deficiency payment is paid in full determines the amount of deficiency that is due, pursuant to paragraph (c) of this section.

(c) *How errors in small entity status are excused.* If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section:

(1) *Separate submission required for each application or patent.* Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (*e.g.,* checks) and itemizations are required for each application or patent. *See* § 1.4(b).

(2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) *Calculation of the deficiency owed.* The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (*e.g.,* basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

(3) *Failure to comply with requirements.* If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

(d) *Payment of deficiency operates as notification of loss of status.* Any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under paragraph (c) of this section will be treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

14. Section 1.33 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) *Correspondence address and daytime telephone number.* When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76(b)(1) and 1.63(c)(2)) as the correspondence address. The Office will direct all notices, official letters, and other communications relating to the application to the correspondence address. The Office will not engage in double correspondence with an applicant and a registered attorney or agent, or with more than one registered attorney or agent except as deemed necessary by the Commissioner. If more than one correspondence address is specified, the Office will establish one as the correspondence address. For the party to whom correspondence is to be addressed, a daytime telephone number should be supplied in a clearly identifiable manner and may be changed by any party who may change the correspondence address. The correspondence address may be changed as follows:

(1) *Prior to filing of a § 1.63 oath or declaration by any of the inventors.* If a § 1.63 oath or declaration has not been

filed by any of the inventors, the correspondence address may be changed by the party who filed the application. If the application was filed by a registered attorney or agent, any other registered practitioner named in the transmittal papers may also change the correspondence address. Thus, the inventor(s), any registered practitioner named in the transmittal papers accompanying the original application, or a party that will be the assignee who filed the application, may change the correspondence address in that application under this paragraph.

(2) *Where a § 1.63 oath or declaration has been filed by any of the inventors.* If a § 1.63 oath or declaration has been filed, or is filed concurrent with the filing of an application, by any of the inventors, the correspondence address may be changed by the parties set forth in paragraph (b) of this section, except for paragraph (b)(2).

(b) *Amendments and other papers.* Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered attorney or agent of record appointed in compliance with § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) An assignee as provided for under § 3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

* * * * *

15. Section 1.34 is revised to read as follows:

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity, pursuant to § 1.31, appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the registered attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.

(b) When a registered attorney or agent shall have filed his or her power of attorney, or authorization, duly executed by the person or persons entitled to prosecute an application or a patent involved in a reexamination proceeding, pursuant to § 1.31, he or she is a principal registered attorney or agent of record in the case. A principal registered attorney or agent, so appointed, may appoint an associate registered attorney or agent who shall also then be of record.

16. Section 1.36 is revised to read as follows:

§ 1.36 Revocation of power of attorney or authorization; withdrawal of registered attorney or agent.

A power of attorney or authorization of agent, pursuant to § 1.31, may be revoked at any stage in the proceedings of a case, and a registered attorney or agent may withdraw, upon application to and approval by the Commissioner. A registered attorney or agent, except an associate registered attorney or agent whose address is the same as that of the principal registered attorney or agent, will be notified of the revocation of the power of attorney or authorization, and the applicant or patent owner will be notified of the withdrawal of the registered attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by a registered attorney or agent of the assignee's own selection. See § 1.613(d) for withdrawal in an interference.

17. Section 1.41 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.41 Applicant for patent.

(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in §§ 1.53(d)(4) and 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventor or inventors.

(2) The inventorship of a provisional application is that inventorship set forth in the cover sheet as prescribed by § 1.51(c)(1). If a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(c), unless applicant files a paper including the processing fee set forth in § 1.17(q), supplying or changing the name or names of the inventor or inventors.

(3) In a nonprovisional application filed without an oath or declaration as prescribed by § 1.63 or a provisional application filed without a cover sheet as prescribed by § 1.51(c)(1), the name, residence, and citizenship of each person believed to be an actual inventor should be provided when the application papers pursuant to § 1.53(b) or § 1.53(c) are filed.

(4) The inventors who submitted an application under § 1.494 or § 1.495 are the inventors in the international application designating the United States (§ 1.48(f)(1) does not apply to applications entering the national stage).

* * * * *

(c) Any person authorized by the applicant may physically or electronically deliver an application for patent to the Office on behalf of the inventor or inventors, but an oath or declaration for the application (§ 1.63) can only be made in accordance with § 1.64.

* * * * *

§ 1.44 [Reserved]

18. Section 1.44 is removed and reserved.

19. Section 1.47 is revised to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in

such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(c) The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the Official Gazette. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

20. Section 1.48 is revised to read as follows:

§ 1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116.

(a) *Nonprovisional application after oath/declaration filed.* If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors. If the nonprovisional application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;

(4) The processing fee set forth in § 1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

(b) *Nonprovisional application—fewer inventors due to amendment or cancellation of claims.* If the correct inventors are named in a nonprovisional application, and the prosecution of the nonprovisional application results in the amendment or cancellation of claims so that fewer than all of the currently named inventors are the actual inventors of the invention being claimed in the nonprovisional application, an amendment must be filed requesting deletion of the name or names of the person or persons who are not inventors of the invention being claimed. If the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Amendment of the inventorship requires:

(1) A request, signed by a party set forth in § 1.33(b), to correct the inventorship that identifies the named inventor or inventors being deleted and acknowledges that the inventor's invention is no longer being claimed in the nonprovisional application; and

(2) The processing fee set forth in § 1.17(i).

(c) *Nonprovisional application—inventors added for claims to previously unclaimed subject matter.* If a nonprovisional application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended to add claims to the subject matter and name the correct inventors for the application. If the application is involved in an interference, the amendment must comply with the requirements of this section and must be accompanied by a motion under § 1.634. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43, or § 1.47;

(4) The processing fee set forth in § 1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

(d) *Provisional application—adding omitted inventors.* If the name or names of an inventor or inventors were omitted in a provisional application through error without any deceptive intention on the part of the omitted inventor or inventors, the provisional application may be amended to add the name or names of the omitted inventor or inventors. Amendment of the inventorship requires:

(1) A request, signed by a party set forth in § 1.33(b), to correct the inventorship that identifies the inventor or inventors being added and states that the inventorship error occurred without deceptive intention on the part of the omitted inventor or inventors; and

(2) The processing fee set forth in § 1.17(q).

(e) *Provisional application—deleting the name or names of the inventor or inventors.* If a person or persons were named as an inventor or inventors in a provisional application through error without any deceptive intention on the part of such person or persons, an amendment may be filed in the provisional application deleting the name or names of the person or persons who were erroneously named. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement by the person or persons whose name or names are being deleted that the inventorship error occurred without deceptive intention on the part of such person or persons;

(3) The processing fee set forth in § 1.17(q); and

(4) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

(f)(1) *Nonprovisional application—filing executed oath/declaration corrects inventorship.* If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63 by any of the inventors, the first submission of an executed oath or declaration under § 1.63 by any of the inventors during the pendency of the application will act to correct the earlier identification of inventorship. See §§ 1.41(a)(4) and 1.497(d) for submission of an executed oath or declaration to enter the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495 naming an inventive entity different from the inventive entity set forth in the international stage.

(2) *Provisional application—filing cover sheet corrects inventorship.* If the correct inventor or inventors are not named on filing a provisional application without a cover sheet under § 1.51(c)(1), the later submission of a cover sheet under § 1.51(c)(1) during the pendency of the application will act to

correct the earlier identification of inventorship.

(g) *Additional information may be required.* The Office may require such other information as may be deemed appropriate under the particular circumstances surrounding the correction of inventorship.

(h) *Reissue applications not covered.* The provisions of this section do not apply to reissue applications. See §§ 1.171 and 1.175 for correction of inventorship in a patent via a reissue application.

(i) *Correction of inventorship in patent or interference.* See § 1.324 for correction of inventorship in a patent, and § 1.634 for correction of inventorship in an interference.

21. Section 1.51 is amended by revising paragraph (b) to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) A complete application filed under § 1.53(b) or § 1.53(d) comprises:

(1) A specification as prescribed by 35 U.S.C. 112, including a claim or claims, see §§ 1.71 to 1.77;

(2) An oath or declaration, see §§ 1.63 and 1.68;

(3) Drawings, when necessary, see §§ 1.81 to 1.85; and

(4) The prescribed filing fee, see § 1.16.

* * * * *

22. Section 1.52 is amended by revising paragraphs (a), (b), and (c), and adding paragraph (e) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specification.

(a) *Papers that are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or a reexamination proceeding.*

(1) All papers, other than drawings, that are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or reexamination proceeding must be on sheets of paper that are the same size, and:

(i) Flexible, strong, smooth, non-shiny, durable, and white;

(ii) Either 21.0 cm by 29.7 cm (DIN size A4) or 21.6 cm by 27.9 cm (8½ by 11 inches), with each sheet including a top margin of at least 2.0 cm (3/4 inch), a left side margin of at least 2.5 cm (1 inch), a right side margin of at least 2.0 cm (3/4 inch), and a bottom margin of at least 2.0 cm (3/4 inch);

(iii) Written on only one side in portrait orientation;

(iv) Plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent; and

(v) Presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic capture by use of digital imaging and optical character recognition.

(2) All papers that are to become a part of the permanent records of the United States Patent and Trademark Office should have no holes in the sheets as submitted.

(3) The provisions of this paragraph and paragraph (b) of this section do not apply to the pre-printed information on forms provided by the Office, or to the copy of the patent submitted in double column format as the specification in a reissue application or request for reexamination.

(4) See § 1.58 for chemical and mathematical formulae and tables, and § 1.84 for drawings.

(5) If papers that do not comply with paragraph (a)(1) of this section are submitted as part of the permanent record, other than the drawings, applicant, or the patent owner, or the requester in a reexamination proceeding, will be notified and must provide substitute papers that comply with paragraph (a)(1) of this section within a set time period.

(b) *The application (specification, including the claims, drawings, and oath or declaration) or reexamination proceeding and any amendments or corrections to the application or reexamination proceeding.* (1) The application or proceeding and any amendments or corrections to the application (including any translation submitted pursuant to paragraph (d) of this section) or proceeding, except as provided for in § 1.69 and paragraph (d) of this section, must:

(i) Comply with the requirements of paragraph (a) of this section; and

(ii) Be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate.

(2) The specification (including the abstract and claims) for other than reissue applications and reexamination proceedings, and any amendments for applications (including reissue applications) and reexamination proceedings to the specification, except as provided for in §§ 1.821 through 1.825, must have:

(i) Lines that are 1½ or double spaced;

(ii) Text written in a nonscript type font (*e.g.,* Arial, Times Roman, or Courier) lettering style having capital letters which are at least 0.21 cm (0.08 inch) high; and

(iii) Only a single column of text.

(3) The claim or claims must commence on a separate sheet (§ 1.75(h)).

(4) The abstract must commence on a separate sheet or be submitted as the first page of the patent in a reissue application or reexamination proceeding (§ 1.72(b)).

(5) Other than in a reissue application or reexamination proceeding, the pages of the specification including claims and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text.

(6) Other than in a reissue application or reexamination proceeding, the paragraphs of the specification, other than in the claims or abstract, may be numbered at the time the application is filed, and should be individually and consecutively numbered using Arabic numerals, so as to unambiguously identify each paragraph. The number should consist of at least four numerals enclosed in square brackets, including leading zeros (*e.g.,* [0001]). The numbers and enclosing brackets should appear to the right of the left margin as the first item in each paragraph, before the first word of the paragraph, and should be highlighted in bold. A gap, equivalent to approximately four spaces, should follow the number. Nontext elements (*e.g.,* tables, mathematical or chemical formulae, chemical structures, and sequence data) are considered part of the numbered paragraph around or above the elements, and should not be independently numbered. If a nontext element extends to the left margin, it should not be numbered as a separate and independent paragraph. A list is also treated as part of the paragraph around or above the list, and should not be independently numbered. Paragraph or section headers (titles), whether abutting the left margin or centered on the page, are not considered paragraphs and should not be numbered.

(7) If papers that do not comply with paragraphs (b)(1) through (b)(5) of this section are submitted as part of the application, applicant, or patent owner, or requester in a reexamination proceeding, will be notified and the applicant, patent owner or requester in a reexamination proceeding must provide substitute papers that comply with paragraphs (b)(1) through (b)(5) of this section within a set time period.

(c)(1) Any interlineation, erasure, cancellation or other alteration of the application papers filed must be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67. In either situation, a substitute specification (§ 1.125) is required if the application papers do not comply with paragraphs (a) and (b) of this section.

(2) After the signing of the oath or declaration referring to the application papers, amendments may only be made in the manner provided by § 1.121.

(3) Notwithstanding the provisions of this paragraph, if an oath or declaration is a copy of the oath or declaration from a prior application, the application for which such copy is submitted may contain alterations that do not introduce matter that would have been new matter in the prior application.

* * * * *

(e) *Electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application or reexamination proceeding.*

(1) The following documents may be submitted to the Office on a compact disc in compliance with this paragraph:

(i) A computer program listing (see § 1.96);

(ii) A ''Sequence Listing'' (submitted under § 1.821(c)); or

(iii) A table (see § 1.58) that has more than 50 pages of text.

(2) A compact disc as used in this part means a Compact Disc-Read Only Memory (CD–ROM) or a Compact Disc-Recordable (CD–R) in compliance with this paragraph. A CD–ROM is a ''read-only'' medium on which the data is pressed into the disc so that it cannot be changed or erased. A CD–R is a ''write once'' medium on which once the data is recorded, it is permanent and cannot be changed or erased.

(3)(i) Each compact disc must conform to the International Standards Organization (ISO) 9660 standard, and the contents of each compact disc must be in compliance with the American Standard Code for Information Interchange (ASCII).

(ii) Each compact disc must be enclosed in a hard compact disc case within an unsealed padded and protective mailing envelope and accompanied by a transmittal letter on paper in accordance with paragraph (a) of this section. The transmittal letter must list for each compact disc the machine format (*e.g.,* IBM–PC, Macintosh), the operating system compatibility (*e.g.,* MS–DOS, MS–Windows, Macintosh, Unix), a list of files contained on the compact disc including their names, sizes in bytes, and dates of creation, plus any other special information that is necessary to identify, maintain, and interpret the information on the compact disc. Compact discs submitted to the Office will not be returned to the applicant.

(4) Any compact disc must be submitted in duplicate unless it contains only the ''Sequence Listing'' in computer readable form required by § 1.821(e). The compact disc and duplicate copy must be labeled ''Copy 1'' and ''Copy 2,'' respectively. The transmittal letter which accompanies the compact disc must include a statement that the two compact discs are identical. In the event that the two compact discs are not identical, the Office will use the compact disc labeled ''Copy 1'' for further processing. Any amendment to the information on a compact disc must be by way of a replacement compact disc in compliance with this paragraph containing the substitute information, and must be accompanied by a statement that the replacement compact disc contains no new matter. The compact disc and copy must be labeled ''COPY 1 REPLACEMENT MM/DD/YYYY'' (with the month, day and year of creation indicated), and ''COPY 2 REPLACEMENT MM/DD/YYYY,'' respectively.

(5) The specification must contain an incorporation-by-reference of the material on the compact disc in a separate paragraph (§ 1.77(b)(4)), identifying each compact disc by the names of the files contained on each of the compact discs, their date of creation and their sizes in bytes. The Office may require applicant to amend the specification to include in the paper portion any part of the specification previously submitted on compact disc.

(6) A compact disc must also be labeled with the following information:

(i) The name of each inventor (if known);

(ii) Title of the invention;

(iii) The docket number, or application number if known, used by the person filing the application to identify the application; and

(iv) A creation date of the compact disc.

(v) If multiple compact discs are submitted, the label shall indicate their order (*e.g.* ''1 of X'').

(vi) An indication that the disk is ''Copy 1'' or ''Copy 2'' of the submission. See paragraph (b)(4) of this section.

(7) If a file is unreadable on both copies of the disc, the unreadable file will be treated as not having been submitted. A file is unreadable if, for example, it is of a format that does not comply with the requirements of paragraph (e)(3) of this section, it is corrupted by a computer virus, or it is written onto a defective compact disc.

* * * * *

23. Section 1.53 is amended by revising paragraphs (c)(1), (c)(2), (d)(4), (e)(2), (f) and (g) and adding paragraph (d)(10) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(1) A provisional application must also include the cover sheet required by § 1.51(c)(1), which may be an application data sheet (§ 1.76), or a cover letter identifying the application as a provisional application. Otherwise, the application will be treated as an application filed under paragraph (b) of this section.

(2) An application for patent filed under paragraph (b) of this section may be converted to a provisional application and be accorded the original filing date of the application filed under paragraph (b) of this section. The grant of such a request for conversion will not entitle applicant to a refund of the fees that were properly paid in the application filed under paragraph (b) of this section. Such a request for conversion must be accompanied by the processing fee set forth in § 1.17(q) and be filed prior to the earliest of:

(i) Abandonment of the application filed under paragraph (b) of this section;

(ii) Payment of the issue fee on the application filed under paragraph (b) of this section;

(iii) Expiration of twelve months after the filing date of the application filed under paragraph (b) of this section; or

(iv) The filing of a request for a statutory invention registration under § 1.293 in the application filed under paragraph (b) of this section.

* * * * *

(d) * * *

(4) An application filed under this paragraph may be filed by fewer than all the inventors named in the prior application, provided that the request for an application under this paragraph

when filed is accompanied by a statement requesting deletion of the name or names of the person or persons who are not inventors of the invention being claimed in the new application. No person may be named as an inventor in an application filed under this paragraph who was not named as an inventor in the prior application on the date the application under this paragraph was filed, except by way of correction of inventorship under § 1.48.

* * * * *

(10) See § 1.103(b) for requesting a limited suspension of action in an application filed under this paragraph.

(e) * * *

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

* * * * *

(f) *Completion of application subsequent to filing—Nonprovisional (including continued prosecution or reissue) application.*

(1) If an application which has been accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee, or if an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the filing fee, file an oath or declaration in an application under paragraph (b) of this section, and pay the surcharge required by § 1.16(e) to avoid abandonment.

(2) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the basic filing fee or an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, file an oath or declaration, and pay the surcharge required by § 1.16(e) to avoid abandonment.

(3) This paragraph applies to continuation or divisional applications under paragraphs (b) or (d) of this section and to continuation-in-part applications under paragraph (b) of this section.

(4) See § 1.63(d) concerning the submission of a copy of the oath or declaration from the prior application for a continuation or divisional application under paragraph (b) of this section.

(5) If applicant does not pay one of the basic filing or the processing and retention fees (§ 1.21(l)) during the pendency of the application, the Office may dispose of the application.

(g) *Completion of application subsequent to filing—provisional application.*

(1) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(k)), and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(l) to avoid abandonment.

(2) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(k)), and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(l) to avoid abandonment.

(3) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

24. Section 1.55 is amended by revising paragraph (a) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d), 172, and 365(a) and (b).

(1) The claim for priority must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intergovernmental organization), day, month, and year of its filing.

(2)(i) In an application filed under 35 U.S.C. 111(a), the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) must be filed before the patent is granted.

(ii) In an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made within the time limit set forth in the PCT and the regulations under the PCT. If the certified copy of the foreign application has not been filed in accordance with the PCT and the regulations under the PCT, it must be filed before the patent is granted.

(iii) When the application becomes involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when deemed necessary by the examiner, the Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than provided in paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(iv) If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid but before the patent is granted (published), it must be accompanied by the processing fee set forth in § 1.17(i). While the priority claim or certified copy filed at such time will be placed in the file record, neither will be reviewed and the patent when published will not include the priority claim. In such instances, patentee may request a certificate of correction under 35 U.S.C. 255 and § 1.323, and a determination of entitlement for priority will be made after the patent is granted.

(3) An English-language translation of a non-English-language foreign application is not required except when the application is involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If an English-language translation is required, it must be filed together with a statement that the translation of the certified copy is accurate.

* * * * *

25. Section 1.56 is amended by adding a new paragraph (e) to read as follows:

§ 1.56 Duty to disclose information material to patentability.

* * * * *

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the

Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

26. Section 1.58 is amended by adding paragraph (b) to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

* * * * *

(b) Tables that are submitted in electronic form (§§ 1.96(c) and 1.821(c)) must maintain the spatial relationships (*e.g.*, columns and rows) of the table elements and preserve the information they convey. Chemical and mathematical formulae must be encoded to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning.

* * * * *

27. Section 1.59 is amended by revising paragraph (b) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

* * * * *

(b) An applicant may request that the Office expunge and return information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge and return information from an application must include the fee set forth in § 1.17(h) and establish to the satisfaction of the Commissioner that the return of the information is appropriate.

* * * * *

28. Section 1.63 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 1.63 Oath or declaration.

(a) An oath or declaration filed under § 1.51(b)(2) as a part of a nonprovisional application must:

(1) Be executed, *i.e.*, signed, in accordance with either § 1.66 or § 1.68. There is no minimum age for a person to be qualified to sign, but the person must be competent to sign, *i.e.*, understand the document that the person is signing;

(2) Identify each inventor by full name, including the family name, and at least one given name without abbreviation together with any other given name or initial;

(3) Identify the country of citizenship of each inventor; and

(4) State that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

(b) In addition to meeting the requirements of paragraph (a) of this section, the oath or declaration must also:

(1) Identify the application to which it is directed;

(2) State that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

(c) Unless such information is supplied on an application data sheet in accordance with § 1.76, the oath or declaration must also identify:

(1) The mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor; and

(2) Any foreign application for patent (or inventor's certificate) for which a claim for priority is made pursuant to § 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing.

* * * * *

(e) A newly executed oath or declaration must be filed in any continuation-in-part application, which application may name all, more, or fewer than all of the inventors named in the prior application.

* * * * *

29. Section 1.64 is revised to read as follows:

§ 1.64 Person making oath or declaration.

(a) The oath or declaration (§ 1.63), including any supplemental oath or declaration (§ 1.67), must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43, 1.47, or § 1.67.

(b) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, 1.47, or § 1.67), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor is required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

30. Section 1.67 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

(a) The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

(1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47) may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

(2) Deficiencies or inaccuracies relating to fewer than all of the inventor(s) or applicant(s) (§§ 1.42, 1.43 or § 1.47) may be corrected with a supplemental oath or declaration identifying the entire inventive entity but signed only by the inventor(s) or applicant(s) to whom the error or deficiency relates.

(3) Deficiencies or inaccuracies due to the failure to meet the requirements of § 1.63(c) (*e.g.*, to correct the omission of a mailing address of an inventor) in an oath or declaration may be corrected with an application data sheet in accordance with § 1.76.

(4) Submission of a supplemental oath or declaration or an application data sheet (§ 1.76), as opposed to who must sign the supplemental oath or declaration or an application data sheet, is governed by § 1.33(a)(2) and paragraph (b) of this section.

* * * * *

31. Section 1.72 is revised to read as follows:

§ 1.72 Title and abstract.

(a) Unless the title is supplied in an application data sheet (§ 1.76), the title of the invention, which should be as short and specific as possible, should appear as a heading on the first page of the specification.

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading ''Abstract'' or ''Abstract of the Disclosure.'' The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark

Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure. The abstract will not be used for interpreting the scope of the claims.

32. A new § 1.76 is added to read as follows:

§ 1.76 Application data sheet.

(a) *Application data sheet.* An application data sheet is a sheet or sheets, that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.

(b) *Bibliographic data.* Bibliographic data as used in paragraph (a) of this section includes:

(1) *Applicant information.* This information includes the name, residence, mailing address, and citizenship of each applicant (§ 1.41(b)). The name of each applicant must include the family name, and at least one given name without abbreviation together with any other given name or initial. If the applicant is not an inventor, this information also includes the applicant's authority (§§ 1.42, 1.43, and 1.47) to apply for the patent on behalf of the inventor.

(2) *Correspondence information.* This information includes the correspondence address, which may be indicated by reference to a customer number, to which correspondence is to be directed (*see* § 1.33(a)).

(3) *Application information.* This information includes the title of the invention, a suggested classification, by class and subclass, the Technology Center to which the subject matter of the invention is assigned, the total number of drawing sheets, a suggested drawing figure for publication (in a nonprovisional application), any docket number assigned to the application, the type of application (*e.g.*, utility, plant, design, reissue, provisional), whether the application discloses any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2 of this chapter (see § 5.2(c)), and, for plant applications, the Latin name of the genus and species of the plant claimed, as well as the variety denomination. The suggested classification and Technology Center information should be supplied for provisional applications whether or not claims are present. If claims are not present in a provisional application, the suggested classification and Technology Center should be based upon the disclosure.

(4) *Representative information.* This information includes the registration number of each practitioner having a power of attorney or authorization of agent in the application (preferably by reference to a customer number). Providing this information in the application data sheet does not constitute a power of attorney or authorization of agent in the application (see § 1.34(b)).

(5) *Domestic priority information.* This information includes the application number, the filing date, the status (including patent number if available), and relationship of each application for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c). Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and § 1.78(a)(2) or § 1.78(a)(4), and need not otherwise be made part of the specification.

(6) *Foreign priority information.* This information includes the application number, country, and filing date of each foreign application for which priority is claimed, as well as any foreign application having a filing date before that of the application for which priority is claimed. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and § 1.55(a).

(c) *Supplemental application data sheets.* Supplemental application data sheets:

(1) May be subsequently supplied prior to payment of the issue fee either to correct or update information in a previously submitted application data sheet, or an oath or declaration under § 1.63 or § 1.67, except that inventorship changes are governed by § 1.48, correspondence changes are governed by § 1.33(a), and citizenship changes are governed by § 1.63 or § 1.67; and

(2) Should identify the information that is being changed (added, deleted, or modified) and therefore need not contain all the previously submitted information that has not changed.

(d) *Inconsistencies between application data sheet and oath or declaration.* For inconsistencies between information that is supplied by both an application data sheet under this section and by an oath or declaration under §§ 1.63 and 1.67:

(1) The latest submitted information will govern notwithstanding whether supplied by an application data sheet, or by a § 1.63 or § 1.67 oath or declaration, except as provided by paragraph (d)(3) of this section;

(2) The information in the application data sheet will govern when the inconsistent information is supplied at the same time by a § 1.63 or § 1.67 oath or declaration, except as provided by paragraph (d)(3) of this section;

(3) The oath or declaration under § 1.63 or § 1.67 governs inconsistencies with the application data sheet in the naming of inventors (§ 1.41(a)(1)) and setting forth their citizenship (35 U.S.C. 115);

(4) The Office will initially capture bibliographic information from the application data sheet (notwithstanding whether an oath or declaration governs the information). Thus, the Office shall generally not look to an oath or declaration under § 1.63 to see if the bibliographic information contained therein is consistent with the bibliographic information captured from an application data sheet (whether the oath or declaration is submitted prior to or subsequent to the application data sheet). Captured bibliographic information derived from an application data sheet containing errors may be recaptured by a request therefor and the submission of a supplemental application data sheet, an oath or declaration under § 1.63 or § 1.67, or a letter pursuant to § 1.33(b).

33. Section 1.77 is revised to read as follows:

§ 1.77 Arrangement of application elements.

(a) The elements of the application, if applicable, should appear in the following order:

(1) Utility application transmittal form.

(2) Fee transmittal form.

(3) Application data sheet (see § 1.76).

(4) Specification.

(5) Drawings.

(6) Executed oath or declaration.

(b) The specification should include the following sections in order:

(1) Title of the invention, which may be accompanied by an introductory portion stating the name, citizenship, and residence of the applicant (unless included in the application data sheet).

(2) Cross-reference to related applications (unless included in the application data sheet).

(3) Statement regarding federally sponsored research or development.

(4) Reference to a ''Sequence Listing,'' a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and

the files on each compact disc shall be specified.

(5) Background of the invention.

(6) Brief summary of the invention.

(7) Brief description of the several views of the drawing.

(8) Detailed description of the invention.

(9) A claim or claims.

(10) Abstract of the disclosure.

(11) ''Sequence Listing,'' if on paper (see §§ 1.821 through 1.825).

(c) The text of the specification sections defined in paragraphs (b)(1) through (b)(11) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type.

34. Section 1.78 is amended by revising paragraphs (a)(2), (a)(4) and (c) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following any title. The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross-references to other related applications may be made when appropriate (see § 1.14).

* * * * *

(4) Any nonprovisional application claiming the benefit of one or more prior filed provisional applications must contain a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number). Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title.

* * * * *

(c) If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same party and contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the Office may require the assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and, if not, indicate which named inventor is the prior inventor.

* * * * *

35. Section 1.84 is amended by revising paragraphs (a), (b), (c), (j), (k), (o), and (x), and adding paragraph (y) to read as follows:

§ 1.84 Standards for drawings.

(a) *Drawings.* There are two acceptable categories for presenting drawings in utility and design patent applications.

(1) *Black ink.* Black and white drawings are normally required. India ink, or its equivalent that secures solid black lines, must be used for drawings; or

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality so that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13). The Office will accept color drawings in utility and design patent applications and statutory invention registrations only after granting a petition filed under this paragraph which explains why color drawings are necessary for the understanding of the claimed invention. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings; and

(iii) An indication that the specification contains or is being amended to contain the following language as the first paragraph in that portion of the brief description of the drawings:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

(b) *Photographs.*—(1) *Black and white.* Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (*e.g.*, immunological, western, Southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

(2) *Color photographs.* Color photographs will be accepted in utility and design patent applications if the conditions for accepting color drawings and black and white photographs have been satisfied. See paragraphs (a)(2) and (b)(1) of this section.

(c) *Identification of drawings.* Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

* * * * *

(j) *Views.* The drawing must contain as many views as necessary to show the invention. One of the views should be suitable for printing on the patent as the illustration of the invention. Views must not be connected by projection lines and must not contain center lines.

(k) *Scale.* The scale to which a drawing is made must be large enough to show the mechanism without crowding when the drawing is reduced in size to two-thirds in reproduction. Indications such as ''actual size'' or ''scale ½'' on the drawings are not permitted since these lose their meaning with reproduction in a different format.

* * * * *

(o) *Legends.* Suitable descriptive legends may be used subject to approval by the Office, or may be required by the examiner where necessary for understanding of the drawing. They should contain as few words as possible.

* * * * *

(x) *Holes.* No holes should be made by applicant in the drawing sheets.

(y) *Types of drawings.* See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.174 for reissue drawings.

36. Section 1.85 is revised to read as follows:

§ 1.85 Corrections to drawings.

(a) If a drawing meets the requirements of §§ 1.84(d), (e), and (f) and is suitable for reproduction, but is not otherwise in compliance with § 1.84, the drawing may be admitted for examination.

(b) The Office will not release drawings for purposes of correction. If corrections are necessary, new corrected drawings must be submitted within the time set by the Office.

(c) If a corrected drawing is required or if a drawing does not comply with § 1.84 at the time an application is allowed, the Office may notify the applicant and set a three month period of time from the mail date of the notice of allowability within which the applicant must file a corrected or formal drawing in compliance with § 1.84 to avoid abandonment. This time period is not extendable under § 1.136(a) or § 1.136(b).

37. Section 1.91 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 1.91 Models or exhibits not generally admitted as part of application or patent.

(a) * * *

(3) * * *

(i) The fee set forth in § 1.17(h); and

* * * * *

38. Section 1.96 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.96 Submission of computer program listings.

* * * * *

(b) *Material which will be printed in the patent*: If the computer program listing is contained in 300 lines or fewer, with each line of 72 characters or fewer, it may be submitted either as drawings or as part of the specification.

(1) *Drawings.* If the listing is submitted as drawings, it must be submitted in the manner and complying with the requirements for drawings as provided in § 1.84. At least one figure numeral is required on each sheet of drawing.

(2) *Specification.* (i) If the listing is submitted as part of the specification, it must be submitted in accordance with the provisions of § 1.52.

(ii) Any listing having more than 60 lines of code that is submitted as part of the specification must be positioned at the end of the description but before the claims. Any amendment must be made by way of submission of a substitute sheet.

(c) *As an appendix which will not be printed*: Any computer program listing may, and any computer program listing having over 300 lines (up to 72 characters per line) must, be submitted on a compact disc in compliance with § 1.52(e). A compact disc containing such a computer program listing is to be referred to as a ''computer program listing appendix.'' The ''computer program listing appendix'' will not be part of the printed patent. The specification must include a reference to the ''computer program listing appendix'' at the location indicated in § 1.77(b)(4).

(1) Multiple computer program listings for a single application may be placed on a single compact disc. Multiple compact discs may be submitted for a single application if necessary. A separate compact disc is required for each application containing a computer program listing that must be submitted on a ''computer program listing appendix.''

(2) The ''computer program listing appendix'' must be submitted on a compact disc that complies with § 1.52(e) and the following specifications (no other format shall be allowed):

(i) Computer Compatibility: IBM PC/XT/AT, or compatibles, or Apple Macintosh;

(ii) Operating System Compatibility: MS–DOS, MS-Windows, Unix, or Macintosh;

(iii) Line Terminator: ASCII Carriage Return plus ASCII Line Feed;

(iv) Control Codes: the data must not be dependent on control characters or codes which are not defined in the ASCII character set; and

(v) Compression: uncompressed data.

39. Section 1.97 is amended by revising paragraphs (a) through (e) and (i) to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraphs (b), (c), or (d) of this section.

(b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

(1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;

(3) Before the mailing of a first Office action on the merits; or

(4) Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:

(1) The statement specified in paragraph (e) of this section; or

(2) The fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:

(1) The statement specified in paragraph (e) of this section; and

(2) The fee set forth in § 1.17(p).

(e) A statement under this section must state either:

(1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

* * * * *

(i) If an information disclosure statement does not comply with either this section or § 1.98, it will be placed in the file but will not be considered by the Office.

40. Section 1.98 is revised to read as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include:

(1) A list of all patents, publications, applications, or other information submitted for consideration by the Office;

(2) A legible copy of:

(i) Each U.S. and foreign patent;

(ii) Each publication, or that portion which caused it to be listed;

(iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and

(iv) All other information, or that portion which caused it to be listed; and

(3)(i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.

(ii) A copy of the translation if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

(b)(1) Each U.S. patent listed in an information disclosure statement must be identified by inventor, patent number, and issue date.

(2) Each listed U.S. application must be identified by the inventor, application number, and filing date.

(3) Each listed foreign patent or published foreign patent application must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.

(4) Each listed publication must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications, provided that it is stated that these other patents or publications are cumulative.

(d) A copy of any patent, publication, pending U.S. application or other information, as specified in paragraph (a) of this section, listed in an information disclosure statement is required to be provided, even if the patent, publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application, unless:

(1) The earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. 120; and

(2) The information disclosure statement submitted in the earlier application complies with paragraphs (a) through (c) of this section.

41. Section 1.102 is amended by revising paragraph (d) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the fee set forth in § 1.17(h).

* * * * *

42. Section 1.104 is amended by revising paragraph (a)(2) and (e) to read as follows:

§ 1.104 Nature of examination.

(a) * * *

(2) The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution.

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(e) *Reasons for allowance.* If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall be incorporated into an Office action rejecting other claims of the application or patent under reexamination or be the subject of a separate communication to the applicant or patent owner. The applicant or patent owner may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure by the examiner to respond to any statement commenting on reasons for allowance does not give rise to any implication.

43. A new § 1.105 is added to read as follows:

§ 1.105 Requirements for information.

(a)(1) In the course of examining or treating a matter in a pending or abandoned application filed under 35 U.S.C. 111 or 371 (including a reissue application), in a patent, or in a reexamination proceeding, the examiner or other Office employee may require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat the matter, for example:

(i) *Commercial databases:* The existence of any particularly relevant commercial database known to any of the inventors that could be searched for a particular aspect of the invention.

(ii) *Search:* Whether a search of the prior art was made, and if so, what was searched.

(iii) *Related information:* A copy of any non-patent literature, published application, or patent (U.S. or foreign), by any of the inventors, that relates to the claimed invention.

(iv) *Information used to draft application:* A copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used to draft the application.

(v) *Information used in invention process:* A copy of any non-patent literature, published application, or patent (U.S. or foreign) that was used in the invention process, such as by designing around or providing a solution to accomplish an invention result.

(vi) *Improvements:* Where the claimed invention is an improvement, identification of what is being improved.

(vii) *In use:* Identification of any use of the claimed invention known to any of the inventors at the time the application was filed notwithstanding the date of the use.

(2) Where an assignee has asserted its right to prosecute pursuant to § 3.71(a) of this chapter, matters such as paragraphs (a)(1)(i), (iii), and (vii) of this section may also be applied to such assignee.

(3) Any reply that states that the information required to be submitted is unknown and/or is not readily available to the party or parties from which it was

requested will be accepted as a complete reply.

(b) The requirement for information of paragraph (a)(1) of this section may be included in an Office action, or sent separately.

(c) A reply, or a failure to reply, to a requirement for information under this section will be governed by §§ 1.135 and 1.136.

44. Section 1.111 is amended by revising the heading and paragraphs (a) and (c) to read as follows:

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a)(1) If the Office action after the first examination (§ 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See §§ 1.135 and 1.136 for time for reply to avoid abandonment.

(2) A second (or subsequent) supplemental reply will be entered unless disapproved by the Commissioner. A second (or subsequent) supplemental reply may be disapproved if the second (or subsequent) supplemental reply unduly interferes with an Office action being prepared in response to the previous reply. Factors that will be considered in disapproving a second (or subsequent) supplemental reply include:

(i) The state of preparation of an Office action responsive to the previous reply as of the date of receipt (§ 1.6) of the second (or subsequent) supplemental reply by the Office; and

(ii) The nature of any changes to the specification or claims that would result from entry of the second (or subsequent) supplemental reply.

* * * * *

(c) In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

45. Section 1.112 is revised to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111) to a non-final action, the application or patent under reexamination will be reconsidered and again examined. The applicant or patent owner will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination (§ 1.104). Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111, with or without amendment, unless such Office action indicates that it is made final (§ 1.113) or an appeal (§ 1.191) has been taken (§ 1.116).

46. A new § 1.115 is added to read as follows:

§ 1.115 Preliminary amendments.

(a) A preliminary amendment is an amendment that is received in the Office (§ 1.6) on or before the mail date of the first Office action under § 1.104.

(b)(1) A preliminary amendment will be entered unless disapproved by the Commissioner. A preliminary amendment may be disapproved if the preliminary amendment unduly interferes with the preparation of a first Office action in an application. Factors that will be considered in disapproving a preliminary amendment include:

(i) The state of preparation of a first Office action as of the date of receipt (§ 1.6) of the preliminary amendment by the Office; and

(ii) The nature of any changes to the specification or claims that would result from entry of the preliminary amendment.

(2) A preliminary amendment will not be disapproved if it is filed no later than:

(i) Three months from the filing date of an application under § 1.53(b);

(ii) The filing date of a continued prosecution application under § 1.53(d); or

(iii) Three months from the date the national stage is entered as set forth in § 1.491 in an international application.

(c) The time periods specified in paragraph (b)(2) of this section are not extendable.

47. Section 1.121 is revised to read as follows:

§ 1.121 Manner of making amendments in applications.

(a) *Amendments in applications, other than reissue applications.* Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification other than the claims and listings provided for elsewhere (§§ 1.96 and 1.825).*—(1) Amendment by instruction to delete, replace, or add a paragraph. Amendments to the specification, other than the claims and listings provided for elsewhere (§§ 1.96 and 1.825), may be made by submitting:

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a deleted paragraph with one or more replacement paragraphs, or add one or more paragraphs;

(ii) Any replacement or added paragraph(s) in clean form, that is, without markings to indicate the changes that have been made; and

(iii) Another version of any replacement paragraph(s), on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of the paragraph(s). The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added paragraph or a deleted paragraph as it is sufficient to state that a particular paragraph has been added, or deleted.

(2) *Amendment by replacement section.* If the sections of the specification contain section headings as provided in §§ 1.77(b), 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction to delete that section of the specification and to replace such deleted section with a replacement section;

(ii) A replacement section in clean form, that is, without markings to indicate the changes that have been made; and

(iii) Another version of the replacement section, on one or more pages separate from the amendment, marked up to show all changes relative to the previous version of the section. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system.

(3) *Amendment by substitute specification.* The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification;

(ii) A substitute specification in compliance with § 1.125(b); and

(iii) Another version of the substitute specification, separate from the substitute specification, marked up to show all changes relative to the previous version of the specification. The changes may be shown by brackets (for deleted matter), or underlining (for added matter), or by any equivalent marking system.

(4) *Reinstatement:* Deleted matter may be reinstated only by a subsequent

amendment presenting the previously deleted matter.

(c) *Claims.*—(1) *Amendment by rewriting, directions to cancel or add:* Amendments to a claim must be made by rewriting such claim with all changes (*e.g.,* additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction.

(i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (*e.g.,* ''amended,'' ''twice amended,'' or ''new'').

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, *e.g.,* ''amended,'' ''twice amended,'' *etc.* The parenthetical expression ''amended,'' ''twice amended,'' *etc.* should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

(d) *Drawings.* Application drawings are amended in the following manner: Any change to the application drawings must be submitted on a separate paper showing the proposed changes in red for approval by the examiner. Upon approval by the examiner, new drawings in compliance with § 1.84 including the changes must be filed.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments:* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2) or (c)(1) of this section is not required.

(h) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(i) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(j) *Amendments in provisional applications:* Amendments in provisional applications are not normally made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

48. Section 1.125 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 1.125 Substitute specification.

* * * * *

(b) * * *

(2) A marked up version of the substitute specification showing all the changes (including the matter being added to and the matter being deleted from) to the specification of record. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

(c) A substitute specification submitted under this section must be submitted in clean form without markings as to amended material. The paragraphs of any substitute specification, other than the claims, should be individually numbered in Arabic numerals so that any amendment to the specification may be made by replacement paragraph in accordance with § 1.121(b)(1).

* * * * *

49. Section 1.131 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or a party qualified under §§ 1.42, 1.43, or § 1.47 may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent is the date that such U.S. patent is effective as a reference under 35 U.S.C. 102(e). Prior invention may not be established under this section in any country other than the United States, a NAFTA country, or a WTO member country. Prior invention may not be established under this section before December 8, 1993, in a NAFTA country other than the United States, or before January 1, 1996, in a WTO member country other than a NAFTA country. Prior invention may not be established under this section if either:

(1) The rejection is based upon a U.S. patent to another or others that claims the same patentable invention as defined in § 1.601(n); or

(2) The rejection is based upon a statutory bar.

* * * * *

50. Section 1.132 is revised to read as follows:

§ 1.132 Affidavits or declarations traversing rejections or objections.

When any claim of an application or a patent under reexamination is rejected or objected to, an oath or declaration may be submitted to traverse the rejection or objection. An oath or declaration may not be submitted under this section to traverse a rejection if the rejection is based upon a U.S. patent to another or others which claims the same patentable invention as defined in § 1.601(n).

51. Section 1.133 is amended by revising paragraph (a) to read as follows:

§ 1.133 Interviews.

(a)(1) Interviews with examiners concerning applications and other matters pending before the Office must be conducted on Office premises and within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner.

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application.

(3) The examiner may require that an interview be scheduled in advance.

* * * * *

52. Section 1.136 is amended by adding paragraph (c) to read as follows:

§ 1.136 Extensions of time.

* * * * *

(c) If an applicant is notified in a ''Notice of Allowability'' that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the ''Notice of Allowability'' or in an Office action having a mail date on or after the mail date of the ''Notice of Allowability':

(1) The period for submitting an oath or declaration in compliance with § 1.63; and

(2) The period for submitting formal drawings set under § 1.85(c).

53. Section 1.137 is amended by revising paragraph (c) to read as follows:

§ 1.137 Revival of abandoned application or lapsed patent.

* * * * *

(c)(1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

(i) The period of abandonment of the application; or

(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (c)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed before June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

(3) The provisions of paragraph (c)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, or to lapsed patents.

* * * * *

54. Section 1.138 is revised to read as follows:

§ 1.138 Express abandonment.

(a) An application may be expressly abandoned by filing in the United States Patent and Trademark Office a written declaration of abandonment identifying the application. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act before the date of issue.

(b) A written declaration of abandonment must be signed by a party authorized under § 1.33(b)(1), (b)(3), or (b)(4) to sign a paper in the application, except as otherwise provided in this paragraph. A registered attorney or agent, not of record, who acts in a representative capacity under the provisions of § 1.34(a) when filing a continuing application, may expressly abandon the prior application as of the filing date granted to the continuing application.

55. Section 1.152 is revised to read as follows:

§ 1.152 Design drawings.

The design must be represented by a drawing that complies with the requirements of § 1.84 and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the design. Appropriate and adequate surface shading should be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces that cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing. Photographs and ink drawings are not permitted to be combined as formal drawings in one application. Photographs submitted in lieu of ink drawings in design patent applications must not disclose environmental structure but must be limited to the design claimed for the article.

56. Section 1.154 is revised to read as follows:

§ 1.154 Arrangement of application elements in a design application.

(a) The elements of the design application, if applicable, should appear in the following order:

(1) Design application transmittal form.

(2) Fee transmittal form.

(3) Application data sheet (see § 1.76).

(4) Specification.

(5) Drawings or photographs.

(6) Executed oath or declaration (see § 1.153(b)).

(b) The specification should include the following sections in order:

(1) Preamble, stating the name of the applicant, title of the design, and a brief description of the nature and intended use of the article in which the design is embodied.

(2) Cross-reference to related applications (unless included in the application data sheet).

(3) Statement regarding federally sponsored research or development.

(4) Description of the figure or figures of the drawing.

(5) Feature description.

(6) A single claim.

(c) The text of the specification sections defined in paragraph (b) of this section, if applicable, should be preceded by a section heading in uppercase letters without underlining or bold type.

57. Section 1.155 is revised to read as follows:

§ 1.155 Expedited examination of design applications.

(a) The applicant may request that the Office expedite the examination of a design application. To qualify for expedited examination:

(1) The application must include drawings in compliance with § 1.84;

(2) The applicant must have conducted a preexamination search; and

(3) The applicant must file a request for expedited examination including:

(i) The fee set forth in § 1.17(k); and

(ii) A statement that a preexamination search was conducted. The statement must also indicate the field of search and include an information disclosure statement in compliance with § 1.98.

(b) The Office will not examine an application that is not in condition for examination (*e.g.,* missing basic filing fee) even if the applicant files a request for expedited examination under this section.

58. Section 1.163 is revised to read as follows:

§ 1.163 Specification and arrangement of application elements in a plant application.

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. For a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) The elements of the plant application, if applicable, should appear in the following order:

(1) Plant application transmittal form.

(2) Fee transmittal form.

(3) Application data sheet (see § 1.76).

(4) Specification.

(5) Drawings (in duplicate).

(6) Executed oath or declaration (§ 1.162).

(c) The specification should include the following sections in order:

(1) Title of the invention, which may include an introductory portion stating the name, citizenship, and residence of the applicant.

(2) Cross-reference to related applications (unless included in the application data sheet).

(3) Statement regarding federally sponsored research or development.

(4) Latin name of the genus and species of the plant claimed.

(5) Variety denomination.

(6) Background of the invention.

(7) Brief summary of the invention.

(8) Brief description of the drawing.

(9) Detailed botanical description.

(10) A single claim.

(11) Abstract of the disclosure.

(d) The text of the specification or sections defined in paragraph (c) of this section, if applicable, should be preceded by a section heading in upper case, without underlining or bold type.

59. Section 1.173 is revised to read as follows:

§ 1.173 Reissue specification, drawings, and amendments.

(a) *Contents of a reissue application.* An application for reissue must contain the entire specification, including the claims, and the drawings of the patent. No new matter shall be introduced into the application. No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251.

(1) *Specification, including claims.* The entire specification, including the claims, of the patent for which reissue is requested must be furnished in the form of a copy of the printed patent, in double column format, each page on only one side of a single sheet of paper. If an amendment of the reissue application is to be included, it must be made pursuant to paragraph (b) of this section. The formal requirements for papers making up the reissue application other than those set forth in this section are set out in § 1.52. Additionally, a copy of any disclaimer (§ 1.321), certificate of correction (§§ 1.322 through 1.324), or reexamination certificate (§ 1.570) issued in the patent must be included. (See also § 1.178).

(2) *Drawings.* Applicant must submit a clean copy of each drawing sheet of the printed patent at the time the reissue application is filed. If such copy complies with § 1.84, no further drawings will be required. Where a drawing of the reissue application is to include any changes relative to the patent being reissued, the changes to the drawing must be made in accordance with paragraph (b)(3) of this section. The Office will not transfer the drawings from the patent file to the reissue application.

(b) *Making amendments in a reissue application.* An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made.

(1) *Specification other than the claims.* Changes to the specification, other than to the claims, must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph without presentation of the text of the paragraph. The precise point in the specification must be identified where any added or rewritten paragraph is located. This paragraph applies whether the amendment is submitted on paper or compact disc (*see* §§ 1.52(e)(1) and 1.821(c), but not for discs submitted under § 1.821(e)).

(2) *Claims.* An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression ''amended,'' ''twice amended,'' *etc.,* should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

(3) *Drawings.* Any change to the patent drawings must be submitted as a sketch on a separate paper showing the proposed changes in red for approval by the examiner. Upon approval by the examiner, new drawings in compliance with § 1.84 including the approved changes must be filed. Amended figures must be identified as ''Amended,'' and any added figure must be identified as ''New.'' In the event that a figure is canceled, the figure must be surrounded by brackets and identified as ''Canceled.''

(c) *Status of claims and support for claim changes.* Whenever there is an amendment to the claims pursuant to paragraph (b) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status (*i.e.,* pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims.

(d) *Changes shown by markings.* Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be enclosed in brackets; and

(2) The matter to be added by reissue must be underlined, except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with ''<U>'' and end with ''</U>'' to properly identify the material being added.

(e) *Numbering of patent claims preserved.* Patent claims may not be renumbered. The numbering of any claim added in the reissue application must follow the number of the highest numbered patent claim.

(f) *Amendment of disclosure may be required.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(g) *Amendments made relative to the patent.* All amendments must be made relative to the patent specification, including the claims, and drawings, which are in effect as of the date of filing of the reissue application.

§ 1.174 [Reserved]

60. Section 1.174 is removed and reserved.

61. Section 1.176 is revised to read as follows:

§ 1.176 Examination of reissue.

(a) A reissue application will be examined in the same manner as a non-reissue, non-provisional application, and will be subject to all the requirements of the rules related to non-reissue applications. Applications for reissue will be acted on by the examiner in advance of other applications.

(b) Restriction between subject matter of the original patent claims and previously unclaimed subject matter may be required (restriction involving only subject matter of the original patent claims will not be required). If restriction is required, the subject matter of the original patent claims will be held to be constructively elected unless a disclaimer of all the patent claims is filed in the reissue application, which disclaimer cannot be withdrawn by applicant.

62. Section 1.177 is revised to read as follows:

§ 1.177 Issuance of multiple reissue patents.

(a) The Office may reissue a patent as multiple reissue patents. If applicant files more than one application for the reissue of a single patent, each such application must contain or be amended to contain in the first sentence of the specification a notice stating that more than one reissue application has been filed and identifying each of the reissue applications by relationship, application number and filing date. The Office may correct by certificate of correction under § 1.322 any reissue patent resulting from an application to which this paragraph applies that does not contain the required notice.

(b) If applicant files more than one application for the reissue of a single patent, each claim of the patent being reissued must be presented in each of the reissue applications as an amended, unamended, or canceled (shown in brackets) claim, with each such claim bearing the same number as in the patent being reissued. The same claim of the patent being reissued may not be presented in its original unamended form for examination in more than one of such multiple reissue applications. The numbering of any added claims in any of the multiple reissue applications must follow the number of the highest numbered original patent claim.

(c) If any one of the several reissue applications by itself fails to correct an error in the original patent as required by 35 U.S.C. 251 but is otherwise in condition for allowance, the Office may suspend action in the allowable application until all issues are resolved as to at least one of the remaining reissue applications. The Office may also merge two or more of the multiple reissue applications into a single reissue application. No reissue application containing only unamended patent claims and not correcting an error in the original patent will be passed to issue by itself.

63. Section 1.178 is revised to read as follows:

§ 1.178 Original patent; continuing duty of applicant.

(a) The application for a reissue should be accompanied by either an offer to surrender the original patent, or the original patent itself, or if the original is lost or inaccessible, by a statement to that effect. The application may be accepted for examination in the absence of the original patent or the statement, but one or the other must be supplied before the application is allowed. If a reissue application is refused, the original patent, if surrendered, will be returned to applicant upon request.

(b) In any reissue application before the Office, the applicant must call to the attention of the Office any prior or concurrent proceedings in which the patent (for which reissue is requested) is or was involved, such as interferences, reissues, reexaminations, or litigations and the results of such proceedings (see also § 1.173(a)(1)).

64. Section 1.181 is amended by revising paragraph (f) to read as follows:

§ 1.181 Petition to the Commissioner.

* * * * *

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

* * * * *

65. Section 1.193 is amended by revising paragraph (b)(1) to read as follows:

§ 1.193 Examiner's answer and reply brief.

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(b)(1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time for filing a reply brief in a reexamination proceeding. The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

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66. Section 1.303 is amended by revising paragraph (a) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

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67. Section 1.311 is amended by revising paragraph (b) to read as follows:

§ 1.311 Notice of allowance.

* * * * *

(b) An authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application only after the mailing of the notice of allowance. The submission of either of the following after the mailing of a notice of allowance will operate as a request to charge the correct issue fee to any deposit account identified in a previously filed authorization to charge fees:

(1) An incorrect issue fee; or

(2) A completed Office-provided issue fee transmittal form (where no issue fee has been submitted).

* * * * *

68. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If applicant timely pays the issue fee, the Office will issue the patent in regular course unless the application is withdrawn from issue (§ 1.313) or the Office defers issuance of the patent. To request that the Office defer issuance of a patent, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

69. Section 1.322 is amended by revising paragraph (a) to read as follows:

§ 1.322 Certificate of correction of Office mistake.

(a)(1) The Commissioner may issue a certificate of correction pursuant to 35 U.S.C. 254 to correct a mistake in a patent, incurred through the fault of the Office, which mistake is clearly disclosed in the records of the Office:

(i) At the request of the patentee or the patentee's assignee;

(ii) Acting *sua sponte* for mistakes that the Office discovers; or

(iii) Acting on information about a mistake supplied by a third party.

(2)(i) There is no obligation on the Office to act on or respond to a submission of information or request to issue a certificate of correction by a third party under paragraph (a)(1)(iii) of this section.

(ii) Papers submitted by a third party under this section will not be made of record in the file that they relate to nor be retained by the Office.

(3) If the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 1.635.

(4) The Office will not issue a certificate of correction under this section without first notifying the patentee (including any assignee of record) at the correspondence address of record as specified in § 1.33(a) and affording the patentee or an assignee an opportunity to be heard.

* * * * *

70. Section 1.323 is revised to read as follows:

§ 1.323 Certificate of correction of applicant's mistake.

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 1.635.

71. Section 1.324 is amended by revising its heading and paragraph (b)(1) and adding paragraph (c) to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

* * * * *

(b) * * *

(1) Where one or more persons are being added, a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on his or her part;

* * * * *

(c) For correction of inventorship in an application see §§ 1.48 and 1.497, and in an interference see § 1.634.

72. Section 1.366 is amended by revising paragraph (c) to read as follows:

§ 1.366 Submission of maintenance fees.

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(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the patent number, and the application number of the United States application for the patent on which the maintenance fee is being paid. If the payment includes identification of only the patent number (*i.e.,* does not identify the application number of the United States application for the patent on which the maintenance fee is being paid), the Office may apply the payment to the patent identified by patent number in the payment or may return the payment.

* * * * *

73. Section 1.446 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

(a) Money paid for international application fees, where paid by actual mistake or in excess, such as a payment not required by law or treaty and its regulations, may be refunded. A mere change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested and will not notify the payor of such amounts. If the payor or party requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer, the Office may use the banking information provided on the payment instrument to make any refund by electronic funds transfer.

(b) Any request for refund under paragraph (a) of this section must be filed within two years from the date the fee was paid. If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization under § 1.25(b), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

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74. Section 1.497 is amended by revising paragraph (b)(2) and adding paragraphs (d) and (e) to read as follows:

§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

* * * * *

(b) * * *

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

* * * * *

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17(i); and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

(e) The Office may require such other information as may be deemed appropriate under the particular

circumstances surrounding the correction of inventorship.

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75. Section 1.510 is amended by revising paragraphs (b)(4) and (e) to read as follows:

§ 1.510 Request for reexamination.

* * * * *

(b) * * *

(4) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

* * * * *

(e) A request filed by the patent owner may include a proposed amendment in accordance with § 1.530.

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76. Section 1.530 is amended by revising its heading and paragraph (d), and adding paragraphs (e) through (l) to read as follows:

§ 1.530 Statement; amendment by patent owner; inventorship change.

* * * * *

(d) *Making amendments in a reexamination proceeding.* A proposed amendment in a reexamination proceeding is made by filing a paper directing that proposed specified changes be made to the patent specification, including the claims, or to the drawings. An amendment paper directing that proposed specified changes be made in a reexamination proceeding may be submitted as an accompaniment to a request filed by the patent owner in accordance with § 1.510(e), as part of a patent owner statement in accordance with paragraph (b) of this section, or, where permitted, during the prosecution of the reexamination proceeding pursuant to § 1.550(a).

(1) *Specification other than the claims.* Changes to the specification, other than to the claims, must be made by submission of the entire text of an added or rewritten paragraph including markings pursuant to paragraph (f) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification must be identified where any added or rewritten paragraph is located. This paragraph applies whether the amendment is submitted on paper or compact disc (*see* §§ 1.96 and 1.825).

(2) *Claims.* An amendment paper must include the entire text of each patent claim which is being proposed to be changed by such amendment paper and of each new claim being proposed to be added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression ''amended,'' ''twice amended,'' *etc.,* should follow the claim number. Each patent claim proposed to be changed and each proposed added claim must include markings pursuant to paragraph (f) of this section, except that a patent claim or proposed added claim should be canceled by a statement canceling the claim, without presentation of the text of the claim.

(3) *Drawings.* Any change to the patent drawings must be submitted as a sketch on a separate paper showing the proposed changes in red for approval by the examiner. Upon approval of the changes by the examiner, only new sheets of drawings including the changes and in compliance with § 1.84 must be filed. Amended figures must be identified as ''Amended,'' and any added figure must be identified as ''New.'' In the event a figure is canceled, the figure must be surrounded by brackets and identified as ''Canceled.''

(4) The formal requirements for papers making up the reexamination proceeding other than those set forth in this section are set out in § 1.52.

(e) *Status of claims and support for claim changes.* Whenever there is an amendment to the claims pursuant to paragraph (d) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status (*i.e.,* pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes to the claims made by the amendment paper.

(f) *Changes shown by markings.* Any changes relative to the patent being reexamined which are made to the specification, including the claims, must include the following markings:

(1) The matter to be omitted by the reexamination proceeding must be enclosed in brackets; and

(2) The matter to be added by the reexamination proceeding must be underlined.

(g) *Numbering of patent claims preserved.* Patent claims may not be renumbered. The numbering of any claims added in the reexamination proceeding must follow the number of the highest numbered patent claim.

(h) *Amendment of disclosure may be required.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(i) *Amendments made relative to patent.* All amendments must be made relative to the patent specification, including the claims, and drawings, which are in effect as of the date of filing the request for reexamination.

(j) *No enlargement of claim scope.* No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amendment may be proposed for entry in an expired patent. Moreover, no amendment, other than the cancellation of claims, will be incorporated into the patent by a certificate issued after the expiration of the patent.

(k) *Amendments not effective until certificate.* Although the Office actions will treat proposed amendments as though they have been entered, the proposed amendments will not be effective until the reexamination certificate is issued.

(l) *Correction of inventorship in a reexamination proceeding.* (1) When it appears in a patent being reexamined that the correct inventor or inventors were not named through error without deceptive intention on the part of the actual inventor or inventors, the Commissioner may, on petition of all the parties, including the assignees, and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, include in the reexamination certificate to be issued under § 1.570 an amendment naming only the actual inventor or inventors. The petition must be submitted as part of the reexamination proceeding, and must satisfy the requirements of § 1.324.

(2) Notwithstanding paragraph (l)(1) of this section, if a petition to correct inventorship satisfying the requirements of § 1.324 is filed in a reexamination proceeding, and the reexamination proceeding is terminated other than by a reexamination certificate under § 1.570, a certificate of correction indicating the change of inventorship stated in the petition will be issued upon request by the patentee.

77. Section 1.550 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

(a) All reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch

within the Office. After issuance of the reexamination order and expiration of the time for submitting any responses thereto, the examination will be conducted in accordance with §§ 1.104, 1.105, 1.110 through 1.113, 1.115, and 1.116 and will result in the issuance of a reexamination certificate under § 1.570.

(b) The patent owner will be given at least thirty days to respond to any Office action. In response to any rejection, such response may include further statements and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

* * * * *

78. Section 1.565 is amended by revising paragraph (a) to read as follows:

§ 1.565 Concurrent office proceedings.

(a) In any reexamination proceeding before the Office, the patent owner must call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissue, reexaminations or litigation and the results of such proceedings.

* * * * *

79. Section 1.666 is amended by revising paragraph (b) to read as follows:

§ 1.666 Filing of interference settlement agreements.

* * * * *

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(h) and on a showing of good cause.

* * * * *

80. Section 1.720 is amended by revising paragraphs (b) and (g) to read as follows:

§ 1.720 Conditions for extension of patent term.

* * * * *

(b) The term of the patent has never been previously extended, except for extensions issued pursuant to §§ 1.701, 1.760, or § 1.790;

* * * * *

(g) The term of the patent, including any interim extension issued pursuant to § 1.790, has not expired before the submission of an application in compliance with § 1.741; and

* * * * *

81. Section 1.730 is revised to read as follows:

§ 1.730 Applicant for extension of patent term; signature requirements.

(a) Any application for extension of a patent term must be submitted by the owner of record of the patent or its agent and must comply with the requirements of § 1.740.

(b) If the application is submitted by the patent owner, the application must be signed either by:

(1) The patent owner in compliance with § 3.73(b) of this chapter; or

(2) A registered practitioner on behalf of the patent owner.

(c) If the application is submitted on behalf of the patent owner by an agent of the patent owner (*e.g.,* a licensee of the patent owner), the application must be signed by a registered practitioner on behalf of the agent. The Office may require proof that the agent is authorized to act on behalf of the patent owner.

(d) If the application is signed by a registered practitioner, the Office may require proof that the practitioner is authorized to act on behalf of the patent owner or agent of the patent owner.

82. Section 1.740 is amended by removing paragraphs (a)(16) and (17) and by revising its heading, the introductory text of paragraph (a), and paragraphs (a)(9), (a)(10), (a)(14), (a)(15), (b) and (c) to read as follows:

§ 1.740 Formal requirements for application for extension of patent term; correction of informalities.

(a) An application for extension of patent term must be made in writing to the Commissioner. A formal application for the extension of patent term must include:

* * * * *

(9) A statement that the patent claims the approved product, or a method of using or manufacturing the approved product, and a showing which lists each applicable patent claim and demonstrates the manner in which at least one such patent claim reads on:

(i) The approved product, if the listed claims include any claim to the approved product;

(ii) The method of using the approved product, if the listed claims include any claim to the method of using the approved product; and

(iii) The method of manufacturing the approved product, if the listed claims include any claim to the method of manufacturing the approved product;

(10) A statement beginning on a new page of the relevant dates and information pursuant to 35 U.S.C. 156(g) in order to enable the Secretary of Health and Human Services or the Secretary of Agriculture, as appropriate, to determine the applicable regulatory review period as follows:

(i) For a patent claiming a human drug, antibiotic, or human biological product:

(A) The effective date of the investigational new drug (IND) application and the IND number;

(B) The date on which a new drug application (NDA) or a Product License Application (PLA) was initially submitted and the NDA or PLA number; and

(C) The date on which the NDA was approved or the Product License issued;

(ii) For a patent claiming a new animal drug:

(A) The date a major health or environmental effects test on the drug was initiated, and any available substantiation of that date, or the date of an exemption under subsection (j) of Section 512 of the Federal Food, Drug, and Cosmetic Act became effective for such animal drug;

(B) The date on which a new animal drug application (NADA) was initially submitted and the NADA number; and

(C) The date on which the NADA was approved;

(iii) For a patent claiming a veterinary biological product:

(A) The date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective;

(B) The date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(C) The date the license issued;

(iv) For a patent claiming a food or color additive:

(A) The date a major health or environmental effects test on the additive was initiated and any available substantiation of that date;

(B) The date on which a petition for product approval under the Federal Food, Drug and Cosmetic Act was initially submitted and the petition number; and

(C) The date on which the FDA published a **Federal Register** notice listing the additive for use;

(v) For a patent claiming a medical device:

(A) The effective date of the investigational device exemption (IDE) and the IDE number, if applicable, or the date on which the applicant began the first clinical investigation involving the device, if no IDE was submitted, and any available substantiation of that date;

(B) The date on which the application for product approval or notice of completion of a product development protocol under Section 515 of the Federal Food, Drug and Cosmetic Act was initially submitted and the number of the application; and

(C) The date on which the application was approved or the protocol declared to be completed;

* * * * *

(14) The prescribed fee for receiving and acting upon the application for extension (see § 1.20(j)); and

(15) The name, address, and telephone number of the person to whom inquiries and correspondence relating to the application for patent term extension are to be directed.

(b) The application under this section must be accompanied by two additional copies of such application (for a total of three copies).

(c) If an application for extension of patent term is informal under this section, the Office will so notify the applicant. The applicant has two months from the mail date of the notice, or such time as is set in the notice, within which to correct the informality. Unless the notice indicates otherwise, this time period may be extended under the provisions of § 1.136.

83. Section 1.741 is amended by revising its heading, the introductory text of paragraph (a) and paragraphs (a)(5) and (b) to read as follows:

§ 1.741 Complete application given a filing date; petition procedure.

(a) The filing date of an application for extension of a patent term is the date on which a complete application is received in the Office or filed pursuant to the procedures set forth in § 1.8 or § 1.10. A complete application must include:

* * * * *

(5) Sufficient information to enable the Commissioner to determine under subsections (a) and (b) of 35 U.S.C. 156 the eligibility of a patent for extension, and the rights that will be derived from the extension, and information to enable the Commissioner and the Secretary of Health and Human Services or the Secretary of Agriculture to determine the length of the regulatory review period; and

* * * * *

(b) If an application for extension of patent term is incomplete under this section, the Office will so notify the applicant. If applicant requests review of a notice that an application is incomplete, or review of the filing date accorded an application under this section, applicant must file a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h) within two months of the mail date of the notice that the application is incomplete, or the notice according the filing date complained of. Unless the notice indicates otherwise, this time period may be extended under the provisions of § 1.136.

84. Section 1.760 is revised to read as follows:

§ 1.760 Interim extension of patent term under 35 U.S.C. 156(e)(2).

An applicant who has filed a formal application for extension in compliance with § 1.740 may request one or more interim extensions for periods of up to one year each pending a final determination on the application pursuant to § 1.750. Any such request should be filed at least three months prior to the expiration date of the patent. The Commissioner may issue interim extensions, without a request by the applicant, for periods of up to one year each until a final determination is made. The patent owner or agent will be notified when an interim extension is granted and notice of the extension will be published in the *Official Gazette of the United States Patent and Trademark Office.* The notice will be recorded in the official file of the patent and will be considered as part of the original patent. In no event will the interim extensions granted under this section be longer than the maximum period for extension to which the applicant would be eligible.

85. Section 1.780 is revised to read as follows:

§ 1.780 Certificate or order of extension of patent term.

If a determination is made pursuant to § 1.750 that a patent is eligible for extension and that the term of the patent is to be extended, a certificate of extension, under seal, or an order granting interim extension under 35 U.S.C. 156(d)(5), will be issued to the applicant for the extension of the patent term. Such certificate or order will be recorded in the official file of the patent and will be considered as part of the original patent. Notification of the issuance of the certificate or order of extension will be published in the *Official Gazette of the United States Patent and Trademark Office.* Notification of the issuance of the order granting an interim extension under 35 U.S.C. 156(d)(5), including the identity of the product currently under regulatory review, will be published in the *Official Gazette of the United States Patent and Trademark Office* and in the **Federal Register**. No certificate of, or order granting, an extension will be issued if the term of the patent cannot be extended, even though the patent is otherwise determined to be eligible for extension. In such situations, the final determination made pursuant to § 1.750 will indicate that no certificate or order will issue.

86. Section 1.821 is amended by revising paragraphs (c), (e) and (f) to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

* * * * *

(c) Patent applications which contain disclosures of nucleotide and/or amino acid sequences must contain, as a separate part of the disclosure, a paper or compact disc copy (*see* § 1.52(e)) disclosing the nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. This paper or compact disc copy is referred to elsewhere in this subpart as the ''Sequence Listing.'' Each sequence disclosed must appear separately in the ''Sequence Listing.'' Each sequence set forth in the ''Sequence Listing'' must be assigned a separate sequence identifier. The sequence identifiers must begin with 1 and increase sequentially by integers. If no sequence is present for a sequence identifier, the code ''000'' must be used in place of the sequence. The response for the numeric identifier <160> must include the total number of SEQ ID NOs, whether followed by a sequence or by the code ''000.''

* * * * *

(e) A copy of the ''Sequence Listing'' referred to in paragraph (c) of this section must also be submitted in computer readable form (CRF) in accordance with the requirements of § 1.824. The computer readable form must be a copy of the ''Sequence Listing'' and may not be retained as a part of the patent application file. If the computer readable form of a new application is to be identical with the computer readable form of another application of the applicant on file in the Office, reference may be made to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application if the computer readable form in the other application was compliant with all of the requirements of this subpart. The new application must be accompanied by a letter making such reference to the other application and computer readable form, both of which shall be completely identified. In the new application, applicant must also request the use of the compliant computer readable ''Sequence Listing'' that is already on file for the other application and must state that the paper or compact disc copy of the ''Sequence Listing'' in the

new application is identical to the computer readable copy filed for the other application.

(f) In addition to the paper or compact disc copy required by paragraph (c) of this section and the computer readable form required by paragraph (e) of this section, a statement that the ''Sequence Listing'' content of the paper or compact disc copy and the computer readable copy are the same must be submitted with the computer readable form, *e.g.,* a statement that ''the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing.''

* * * * *

87. Section 1.823 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application.

(a)(1) If the ''Sequence Listing'' required by § 1.821(c) is submitted on paper: The ''Sequence Listing,'' setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (b) of this section, must begin on a new page and must be titled ''Sequence Listing.'' The pages of the ''Sequence Listing'' preferably should be numbered independently of the numbering of the remainder of the application. Each page of the ''Sequence Listing'' shall contain no more than 66 lines and each line shall contain no more than 72 characters. A fixed-width font should be used exclusively throughout the ''Sequence Listing.''

(2) If the ''Sequence Listing'' required by § 1.821(c) is submitted on compact disc: The ''Sequence Listing'' must be submitted on a compact disc in compliance with § 1.52(e). The compact disc may also contain table information if the application contains table information that may be submitted on a compact disc (§ 1.52(e)(1)(iii)). The specification must contain an incorporation-by-reference of the Sequence Listing as required by § 1.52(e)(5). The presentation of the ''Sequence Listing'' and other materials on compact disc under § 1.821(c) does not substitute for the Computer Readable Form that must be submitted on disk, compact disc, or tape in accordance with § 1.824.

* * * * *

88. Section 1.824 is revised to read as follows:

§ 1.824 Form and format for nucleotide and/or amino acid sequence submissions in computer readable form.

(a) The computer readable form required by § 1.821(e) shall meet the following requirements:

(1) The computer readable form shall contain a single ''Sequence Listing'' as either a diskette, series of diskettes, or other permissible media outlined in paragraph (c) of this section.

(2) The ''Sequence Listing'' in paragraph (a)(l) of this section shall be submitted in American Standard Code for Information Interchange (ASCII) text. No other formats shall be allowed.

(3) The computer readable form may be created by any means, such as word processors, nucleotide/amino acid sequence editors' or other custom computer programs; however, it shall conform to all requirements detailed in this section.

(4) File compression is acceptable when using diskette media, so long as the compressed file is in a self-extracting format that will decompress on one of the systems described in paragraph (b) of this section.

(5) Page numbering must not appear within the computer readable form version of the ''Sequence Listing'' file.

(6) All computer readable forms must have a label permanently affixed thereto on which has been hand-printed or typed: the name of the applicant, the title of the invention, the date on which the data were recorded on the computer readable form, the operating system used, a reference number, and an application number and filing date, if known. If multiple diskettes are submitted, the diskette labels must indicate their order (*e.g.* ''1 of X'').

(b) Computer readable form submissions must meet these format requirements:

(1) Computer Compatibility: IBM PC/XT/AT or Apple Macintosh;

(2) Operating System Compatibility: MS–DOS, MS-Windows, Unix or Macintosh;

(3) Line Terminator: ASCII Carriage Return plus ASCII Line Feed; and

(4) Pagination: Continuous file (no ''hard page break'' codes permitted).

(c) Computer readable form files submitted may be in any of the following media:

(1) Diskette: 3.50 inch, 1.44 Mb storage; 3.50 inch, 720 Kb storage; 5.25 inch, 1.2 Mb storage; 5.25 inch, 360 Kb storage.

(2) Magnetic tape: 0.5 inch, up to 24000 feet; Density: 1600 or 6250 bits per inch, 9 track; Format: Unix tar command; specify blocking factor (not ''block size''); Line Terminator: ASCII Carriage Return plus ASCII Line Feed.

(3) 8mm Data Cartridge: Format: Unix tar command; specify blocking factor (not ''block size''); Line Terminator: ASCII Carriage Return plus ASCII Line Feed.

(4) Compact disc: Format: ISO 9660 or High Sierra Format.

(5) Magneto Optical Disk: Size/Storage Specifications: 5.25 inch, 640 Mb.

(d) Computer readable forms that are submitted to the Office will not be returned to the applicant.

89. Section 1.825 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.825 Amendments to or replacement of sequence listing and computer readable copy thereof.

(a) Any amendment to a paper copy of the ''Sequence Listing'' (§ 1.821(c)) must be made by the submission of substitute sheets and include a statement that the substitute sheets include no new matter. Any amendment to a compact disc copy of the ''Sequence Listing'' (§ 1.821(c)) must be made by the submission of a replacement compact disc (2 copies) in compliance with § 1.52(e). Amendments must also be accompanied by a statement that indicates support for the amendment in the application, as filed, and a statement that the replacement compact disc includes no new matter.

(b) Any amendment to the paper or compact disc copy of the ''Sequence Listing,'' in accordance with paragraph (a) of this section, must be accompanied by a substitute copy of the computer readable form (§ 1.821(e)) including all previously submitted data with the amendment incorporated therein, accompanied by a statement that the copy in computer readable form is the same as the substitute copy of the ''Sequence Listing.''

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PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

90. The authority citation for 37 CFR Part 3 is revised to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

91. Section 3.27 is revised to read as follows:

§ 3.27 Mailing address for submitting documents to be recorded.

Documents and cover sheets to be recorded should be addressed to the Commissioner, United States Patent and Trademark Office, Box Assignment, Washington, D.C. 20231, unless they are filed together with new applications or with a request under § 3.81.

92. Section 3.71 is revised to read as follows:

§ 3.71 Prosecution by assignee.

(a) *Patents—conducting of prosecution.* One or more assignees as defined in paragraph (b) of this section may, after becoming of record pursuant to paragraph (c) of this section, conduct prosecution of a national patent application or a reexamination proceeding to the exclusion of either the inventive entity, or the assignee(s) previously entitled to conduct prosecution.

(b) *Patents—Assignee(s) who can prosecute.* The assignee(s) who may conduct either the prosecution of a national application for patent or a reexamination proceeding are:

(1) *A single assignee.* An assignee of the entire right, title and interest in the application or patent being reexamined who is of record, or

(2) *Partial assignee(s) together or with inventor(s).* All partial assignees, or all partial assignees and inventors who have not assigned their right, title and interest in the application or patent being reexamined, who together own the entire right, title and interest in the application or patent being reexamined. A partial assignee is any assignee of record having less than the entire right, title and interest in the application or patent being reexamined.

(c) *Patents—Becoming of record.* An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

(d) *Trademarks.* The assignee of a trademark application or registration may prosecute a trademark application, submit documents to maintain a trademark registration, or file papers against a third party in reliance on the assignee's trademark application or registration, to the exclusion of the original applicant or previous assignee. The assignee must establish ownership in compliance with § 3.73(b).

93. Section 3.73 is revised to read as follows:

§ 3.73 Establishing right of assignee to take action.

(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application or registration, unless there is an assignment.

(b)(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Commissioner. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

(i) Documentary evidence of a chain of title from the original owner to the assignee (*e.g.,* copy of an executed assignment). The documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.,* reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, *e.g.,* an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.

(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

94. Section 3.81 is revised to read as follows:

§ 3.81 Issue of patent to assignee.

(a) *With payment of the issue fee:* An application may issue in the name(s) of the assignee(s) consistent with the application's assignment where a request for such issuance is submitted with payment of the issue fee, provided the assignment has been previously recorded in the Office. If the assignment has not been previously recorded, the request should be accompanied by the assignment and either a direction to record the assignment in the Office pursuant to § 3.28, or a statement under § 3.73(b).

(b) *After payment of the issue fee:* An application may issue in the name(s) of the assignee(s) consistent with the application's assignment where a request for such issuance along with the processing fee set forth in § 1.17(i) of this chapter is submitted after the date of payment of the issue fee, but prior to issuance of the patent, provided the assignment has been previously recorded in the Office. If the assignment has not been previously recorded, the request should be accompanied by the assignment and either a direction to record the assignment in the Office pursuant to § 3.28, or a statement under § 3.73(b).

(c) *Partial assignees.* (1) If one or more assignee(s) together with one or more inventor(s) hold the entire right, title, and interest in the application, the patent may issue in the names of the assignee(s) and the inventor(s).

(2) If multiple assignees hold the entire right, title, and interest to the exclusion of all the inventors, the patent may issue in the names of the multiple assignees.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

95. The authority citation for 37 CFR Part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; and the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

96. Section 5.1 is revised to read as follows:

§ 5.1 Applications and correspondence involving national security.

(a) All correspondence in connection with this part, including petitions, should be addressed to ''Commissioner for Patents (Attention Licensing and Review), Washington, D.C. 20231.''

(b) Application as used in this part includes provisional applications filed under 35 U.S.C. 111(b) (§ 1.9(a)(2) of this chapter), nonprovisional applications filed under 35 U.S.C. 111(a) or entering the national stage from an international application after compliance with 35 U.S.C. 371 (§ 1.9(a)(3)), or international applications filed under the Patent

Cooperation Treaty prior to entering the national stage of processing (§ 1.9(b)).

(c) Patent applications and documents relating thereto that are national security classified (see § 1.9(i) of this chapter) and contain authorized national security markings (*e.g.*, ''Confidential,'' ''Secret'' or ''Top Secret'') are accepted by the Office. National security classified documents filed in the Office must be either hand-carried to Licensing and Review or mailed to the Office in compliance with paragraph (a) of this section.

(d) The applicant in a national security classified patent application must obtain a secrecy order pursuant to § 5.2(a). If a national security classified patent application is filed without a notification pursuant to § 5.2(a), the Office will set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to § 5.2(a), or the applicant must submit evidence of a good faith effort to obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency in order to prevent abandonment of the application. If evidence of a good faith effort to obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency is submitted by the applicant within the time period set by the Office, but the application has not been declassified or placed under a secrecy order pursuant to § 5.2(a), the Office will again set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to § 5.2(a), or the applicant must submit evidence of a good faith effort to again obtain a secrecy order pursuant to § 5.2(a) from the relevant department or agency in order to prevent abandonment of the application.

(e) A national security classified patent application will not be allowed pursuant to § 1.311 of this chapter until the application is declassified and any secrecy order pursuant to § 5.2(a) has been rescinded.

(f) Applications on inventions made outside the United States and on inventions in which a U.S. Government defense agency has a property interest will not be made available to defense agencies.

97. Section 5.2 is amended by adding a new paragraph (c) to read as follows:

§ 5.2 Secrecy order.

* * * * *

(c) An application disclosing any significant part of the subject matter of an application under a secrecy order pursuant to paragraph (a) of this section also falls within the scope of such secrecy order. Any such application that is pending before the Office must be promptly brought to the attention of Licensing and Review, unless such application is itself under a secrecy order pursuant to paragraph (a) of this section. Any subsequently filed application containing any significant part of the subject matter of an application under a secrecy order pursuant to paragraph (a) of this section must either be hand-carried to Licensing and Review or mailed to the Office in compliance with § 5.1(a).

98. Section 5.12 is amended by revising paragraph (b) to read as follows:

§ 5.12 Petition for license.

* * * * *

(b) A petition for license must include the fee set forth in § 1.17(h) of this chapter, the petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner. The petition should be presented in letter form.

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PART 10—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

99. The authority citation for 37 CFR Part 10 is revised to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 31, 32, 41.

100. Section 10.23 is amended by revising paragraph (c)(11) to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(11) Except as permitted by § 1.52(c) of this chapter, knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers.

* * * * *

Dated: August 9, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–22392 Filed 9–7–00; 8:45 am]

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Federal Register

Friday,

September 8, 2000

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 00P–1275 and 00P–1276]

Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is authorizing the use, on food labels and in food labeling, of health claims on the association between plant sterol/stanol esters and reduced risk of coronary heart disease (CHD). FDA is taking this action in response to a petition filed by Lipton (plant sterol esters petitioner) and a petition filed by McNeil Consumer Healthcare (plant stanol esters petitioner). Based on the totality of publicly available evidence, the agency has concluded that plant sterol/stanol esters may reduce the risk of CHD.

DATES: This rule is effective September 8, 2000. Submit written comments by November 22, 2000. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 101.83(c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B)(*2*), as of September 8, 2000.

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

FOR FURTHER INFORMATION CONTACT: Sharon A. Ross, Center for Food Safety and Applied Nutrition (HFS–832), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5343.

SUPPLEMENTARY INFORMATION:

I. Background

The President signed into law, on November 8, 1990, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in number of important ways. One of the most notable aspects of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act for conventional foods (hereinafter referred to as the 1993 health claims final rule). In that final rule, FDA adopted §101.14 (21 CFR 101.14), which sets out the rules for the authorization of health claims by regulation and prescribes general requirements for the use of health claims. Additionally, §101.70 (21 CFR 101.70) establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship (§101.70(a)) and sets out the types of information that any such petition must include (§101.70(d)). On January 4, 1994 (59 FR 395), FDA issued a final rule applying the requirements of §§101.14 and 101.70 to health claims for dietary supplements.

FDA also conducted an extensive review of the evidence on 10 substance-disease relationships listed in the 1990 amendments. As a result of its review, FDA authorized claims for 8 of these 10 relationships, one of which focused on the relationship between dietary saturated fat and cholesterol and reduced risk of CHD. CHD is the most common, most frequently reported, and most serious form of cardiovascular disease (CVD) (58 FR 2739, January 6, 1993). Further, while the agency denied the use on food labeling of health claims relating dietary fiber to reduced risk of CVD (58 FR 2552, January 6, 1993), it authorized a health claim relating fiber-containing fruits, vegetables, and grain products to a reduced risk of CHD.

In the proposed rule entitled ''Health Claims and Label Statements; Lipids and Cardiovascular Disease'' (56 FR 60727 at 60727, 60728, and 60732, November 27, 1991), FDA set out the criteria for evaluating evidence on diet and CVD relationships, including the relationship between diet and CHD. FDA noted that, because of the public health importance of CHD, identification of ''modifiable'' risk factors for CHD had been the subject of considerable research and public policy attention. The agency also noted that there is general agreement that elevated blood cholesterol levels are one of the major modifiable risk factors in the development of CHD. FDA cited Federal Government and other reviews that concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total and low density lipoprotein (LDL) cholesterol are a cause of atherosclerosis (inadequate blood circulation due to narrowing of the arteries) and represent major contributors to CHD. Further, factors that decrease total blood cholesterol and LDL cholesterol will also decrease the risk of CHD. FDA concluded that it is generally accepted that blood total and LDL cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. High intakes of dietary saturated fat and, to a lesser degree, of dietary cholesterol are consistently associated with elevated blood cholesterol levels. FDA concluded that the publicly available data supported an association between diets low in saturated fat and cholesterol and reduced risk of CHD (58 FR 2739 at 2751).

The agency has authorized other health claims for reducing the risk of CHD using the aforementioned criteria. In the final rule entitled ''Health Claims; Dietary Fiber and Cardiovascular Disease'' (58 FR 2552), FDA concluded that the publicly available scientific information supported an association between fruits, vegetables, and grain products (i.e., foods that are low in saturated fat and cholesterol and that are good sources of dietary fiber) and reduced risk of CHD through the intermediate link of blood cholesterol (58 FR 2552 at 2572) (codified at §101.77)). In response to two petitions documenting that dietary consumption of soluble fiber from beta-glucan from oat products and psyllium seed husk significantly reduced blood cholesterol levels, FDA authorized health claims for soluble fiber from certain foods and reduced risk of CHD in §101.81 (21 CFR 101.81) (62 FR 3584 at 3600, January 23, 1997, and amended at 62 FR 15343 at 15344, March 31, 1997, pertaining to beta-glucan from oat products, and 63 FR 8103 at 8119, February 18, 1998 pertaining to psyllium seed husk). More recently, FDA authorized a health claim for soy protein and reduced risk of CHD in §101.82 (21 CFR 101.82) (64 FR 57700, October 26, 1999). In the final rule authorizing the claim, the agency concluded, based on the totality of publicly available scientific evidence, that there is significant scientific agreement that soy protein, included at a level of 25 grams (g) per day (d) in a diet low in saturated fat and cholesterol, can help reduce total and LDL cholesterol levels, and that such reductions may reduce the risk of CHD (64 FR 57700 at 57713). The dietary fiber and CVD (56 FR 60582 at 60583 and 60587, November 27, 1991), soluble fiber from beta-glucan from oat products and CHD (61 FR 296 at 298, January 4, 1996), soluble fiber from psyllium seed husk and CHD (62 FR 28234 at 28236 and 28237, May 22, 1997), and soy protein and CHD (63 FR 62977 at 62979 and 62980, November 10, 1998) health claim reviews in the proposed rules were conducted in accordance with the

1991 criteria for evaluating the evidence between diet and CHD (56 FR 60727 at 60727, 60728, and 60732.

The present rulemaking is in response to two health claim petitions. One health claim petition concerns the relationship between plant sterol esters and the risk of CHD, and the other concerns the relationship between plant stanol esters and the risk of CHD. Although the plant sterol esters petition characterizes the petitioned substance as vegetable oil sterol esters, FDA believes it is more accurately characterized as plant sterol esters. The petition states that vegetable oil sterol esters consist of esterified plant sterols (Ref. 1, page 3). The petition also mentions that canola oil is one of the oils used as a source for the sterol component of vegetable oil sterol esters (Ref. 1, page 82). Canola oil is derived from a seed (rapeseed). Although seeds are clearly part of the plant kingdom, they are not ordinarily thought of as vegetables. Therefore, FDA is concerned that the term ''vegetable oil sterol esters'' may not be understood to cover esterified sterols from sources like canola oil. Accordingly, the agency is using the term ''plant sterol esters'' throughout this document. For purposes of this rule, plant sterol esters and plant stanol esters will be referred to collectively as ''plant sterol/stanol esters.''

II. Petitions for Plant Sterol/Stanol Esters and Reduced Risk of CHD

A. Background

Lipton submitted a health claim petition to FDA on February 1, 2000, requesting that the agency authorize a health claim on the relationship between consumption of certain plant sterol ester-containing foods and the risk of CHD (Refs.1 through 4). Specifically, Lipton requested that spreads and dressings for salad[1] containing at least 1.6 grams of plant sterol esters per reference amount customarily consumed be authorized to bear a health claim about reduced risk of CHD. On May 11, 2000, the agency sent this petitioner a letter stating that FDA had decided to file the petition for further review (Ref. 5). On June 26, 2000, Lipton submitted a request asking FDA to exercise its authority under section 403(r)(7) of the act (21 U.S.C. 343(r)(7)) to make any proposed regulation for its petitioned health claim effective upon publication, pending consideration of public comment and publication of a final rule (Ref. 6). If the agency does not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing, the petition is deemed to be denied unless an extension is mutually agreed upon by the agency and the petitioner (section 403(r)(4)(a)(i) of the act and 21 CFR 101.70(j)(3)(iii)). On August 2, 2000, FDA and the plant sterol ester petitioner agreed to an extension of 30 days, until September 6, 2000 (Ref. 7).

On February 15, 2000, McNeil Consumer Healthcare submitted a health claim petition to FDA requesting that the agency authorize a health claim on the relationship between consumption of plant stanol ester-containing foods and dietary supplements and the risk of CHD (Refs. 8 through 14). On May 25, 2000, the agency sent this petitioner a letter stating that FDA had decided to file the petition for further review (Ref. 15). On June 14, 2000, McNeil Consumer Healthcare submitted a request asking FDA to exercise its authority under section 403(r)(7) of the act to make any proposed regulation for its petitioned health claim effective upon publication, pending consideration of public comment and publication of a final rule (Ref. 16). On July 17, 2000, FDA and the plant stanol ester petitioner agreed to an extension of the deadline to publish a proposed regulation until September 6, 2000 (Ref. 17).

In this interim final rule, the agency concludes that a health claim about plant sterol/stanol esters and reduced risk of CHD should be authorized under the standard in section 403(r)(3)(B)(i) of the act and §101.14(c) of FDA's regulations and should be made effective upon publication under section 403(r)(7) of the act, pending consideration of public comment and publication of a final regulation. The agency is requesting comments on this interim final rule. Firms should be aware that a final rule on this health claim may differ from this interim final rule and that they would be required to revise their labels to conform to any changes adopted in the final rule.

B. Review of Preliminary Requirements for a Health Claim

1. The Substances Are Associated With a Disease for Which the U.S. Population Is at Risk

Several previous rules establish that CHD is a disease for which the U.S. population is at risk. These include rules authorizing claims for dietary saturated fat and cholesterol and risk of CHD §101.75 (21 CFR 101.75)); fiber-containing fruits, vegetables, and grain products and risk of CHD (§101.77); soluble fiber from certain foods and risk of CHD (§101.81); and soy protein and risk of CHD (§101.82). FDA stated in these rules that CHD remains a major public health problem and the number one cause of death in the United States. Despite the decline in deaths from CHD over the past 30 years, this disease is still exacting a tremendous toll in morbidity (illness and disability) and mortality (premature deaths) (Refs. 18 through 20). There are more than 500,000 deaths each year for which CHD is the primary cause, and another 250,000 deaths for which CHD is a contributing cause. About 20 percent of adults (male and female; black and white) ages 20 to 74 years have blood total cholesterol (or serum cholesterol) levels in the ''high risk'' category (total cholesterol greater than (>) 240 milligrams (mg) / deciliter (dL) and LDL cholesterol > 160mg/dL) (Ref. 21). Another 31 percent have ''borderline high'' cholesterol levels (total cholesterol between 200 and 239 mg/dL and LDL cholesterol between 130 and 159 mg/dL) in combination with two or more other risk factors for CHD.

CHD has a significant effect on health care costs. In 1999, total direct costs related to CHD were estimated at $53.1 billion, and indirect costs from loss of productivity due to illness, disability, and premature deaths from this disease were an estimated $46.7 billion (Ref. 22). Based on these facts, FDA concludes that, as required in §101.14(b)(1), CHD is a disease for which the U.S. population is at risk.

2. The Substances Are Food

The substances that are the subject of this interim final rule are plant sterol esters and plant stanol esters (Refs. 1 through 4 and 8 through 14).

a. *Plant sterol esters.* The substance that is the subject of the plant sterol ester petition is a mixture of plant sterols esterified to food-grade fatty acids. The sterols are primarily (beta-sitosterol, campesterol, and stigmasterol and are extracted from plant sources (Ref. 1, page 6). Plant sterols occur widely throughout the plant kingdom

[1] The agency is using the term ''dressings for salad'' throughout this document in lieu of the term ''salad dressing'' used by the petitioners because the standard of identity for ''salad dressing'' in §169.150 (21 CFR 164.150) refers to a limited class of dressings for salad, i.e., those that contain egg yolk and meet certain other specifications. ''Salad dressing'' as defined in §169.150 does not include a number of common types of dressings for salad, such as Italian dressing.

and are present in many edible fruits, vegetables, nuts, seeds, cereals, and legumes (Refs. 23 and 24). The plant sterols in foods may occur as either the free sterol or esterified with a fatty acid.

Several studies have estimated dietary plant sterol intake. From a population in the Los Angeles area, Nair et al. (Ref. 25) found that plant sterol (beta-sitosterol and stigmasterol) intake ranged from 77.9 mg/d in the general population to 343.6 mg/d in lacto-ovo vegetarians. The 1991 British diet was estimated to contain about 158 mg/d of sterols (beta-sitosterol, stigmasterol, and campesterol) (Ref. 26). Scandinavian vegetarians consume, on average, 513 mg/d and nonvegetarians 398 mg/d (Ref. 27). Plant sterol intake in the Japanese diet has been estimated at 373 mg/d (Ref. 28). In an analysis of diets of participants in the Seven Countries Study, deVries et al. (Ref. 29) found plant sterol intake (sitosterol, stigmasterol and campesterol) to range from 170 mg/d among U.S. railroad workers to 358 mg/d in Corfu, Greece. In a review, Ling and Jones (Ref. 30) estimated average U.S. intake at 250 mg/d; it was speculated that this level was doubled among vegetarians. Thus, plant sterols are a constituent of the diet for Americans and other population groups.

According to the plant sterol ester petitioner, the solubility of free sterols in oil is only 2 percent, but the solubility of sterol esters in oil exceeds 20 percent (Ref. 1, pages 14 and 99). Therefore, the free plant sterols are esterified with fatty acids from sunflower to improve solubility. The petitioner also notes that improved solubility of plant sterols creates a palatable product and is associated with more uniform distribution in the product and in the gastrointestinal tract (Ref. 1, page 14). In vegetable oils, typically between 25 and 80 percent of the sterol is in the ester form (Refs. 31 through 34). One gram of plant sterols is equivalent to about 1.6 g of plant sterol esters (Refs. 35 and 36).

Under §101.14(b)(3)(i), the substance that is the subject of a health claim must contribute taste, aroma, or nutritive value, or any other technical effect listed in §170.3(o) (21 CFR 170.3(o)), to the food and must retain that attribute when consumed at the levels that are necessary to justify a claim. Plant sterol esters do not contribute taste, aroma, or any other technical effect listed in §170.3(o), and thus the plant sterol esters must contribute nutritive value to meet the requirement in §101.14(b)(3)(i).

The term 'nutritive value' is defined in §101.14(a)(3) as ''value in sustaining human existence by such processes as promoting growth, replacing loss of essential nutrients, or providing energy.'' In the proposed rule entitled ''Labeling; General Requirements for Health Claims for Food'' (56 FR 60537, November 27, 1991), FDA proposed this definition and explained its interpretation of nutritive value in the context of whether a substance is a food and thus appropriately the subject of a health claim (56 FR 60537 at 60542). The agency indicated that the definition was formulated based on the common meaning of the words that make up the term ''nutritive value.'' The agency also added that use of the phrase ''such processes as'' in the definition of nutritive value was intended to provide a measure of flexibility that the agency believed would be necessary in evaluating future petitions. In the final rule adopting the proposed definition, the agency noted that the evaluation of the nutritive value of substances would be done on a case-by-case basis to best ensure that the definition retains its intended flexibility (58 FR 2478 at 2488). In a subsequent final rule on health claims for dietary supplements (59 FR 395 at 407), FDA further explained that nutritive value ''includes assisting in the efficient functioning of classical nutritional processes and of other metabolic processes necessary for the normal maintenance of human existence.''

The scientific evidence suggests that the cholesterol-lowering effect of plant sterol esters is achieved through an effect on the digestive process (Ref. 1, pages 62 through 64). The digestive process is one of the metabolic processes necessary for the normal maintenance of human existence. Therefore, the agency concludes that the preliminary requirement of §101.14(b)(3)(i) is satisfied.

b. *Plant stanol esters.* The substance that is the subject of the plant stanol ester petition is a mixture of plant stanols esterified to food-grade fatty acids. The stanols are primarily sitostanol and campestanol and may be derived from hydrogenated plant sterol mixtures or extracted from plant sources (Ref. 8, page 18). Sitostanol and campestanol occur naturally in small quantities in the lipid fractions of cereal grains such as wheat, rye, and corn (Refs. 37 through 39) and in vegetable oils such as corn and olive oil (Refs. 40 and 41). The average western diet provides 20 to 50 mg of plant stanols daily (Ref. 42).

According to the plant stanol ester petitioner, esterification of free stanols with fatty acids renders plant stanols readily soluble in foods and makes an effective vehicle for delivery of plant stanols to the small intestine (Ref. 8, page 9). One gram of wood-derived plant stanols is equivalent to about 1.7 g of plant stanol esters (Ref. 43), and 1 g of vegetable oil plant stanols is equivalent to about 1.8 g of plant stanol esters (Ref. 43).

As discussed in section II.B.2.a of this document, the substance that is the subject of a health claim must contribute taste, aroma, or nutritive value, or any other technical effect listed in §170.3(o), to the food and must retain that attribute when consumed at levels that are necessary to justify a claim (§101.14(b)(3)(i)). Plant stanol esters do not contribute taste, aroma or any other technical effect listed in §170.3(o) and thus must contribute nutritive value to meet the requirement in §101.14(b)(3)(i). The term ''nutritive value'' is defined in §101.14(a)(3) as ''value in sustaining human existence by such processes as promoting growth, replacing loss of essential nutrients, or providing energy.''

The scientific evidence suggests that the cholesterol-lowering effect of plant stanol esters is achieved through an effect on the digestive process (Ref. 8, pages 11 through 12). As discussed in section II.B.2.a of this document and in the final rule on health claims for dietary supplements (59 FR 395 at 407), nutritive value includes assisting in the efficient functioning of classical nutritional processes and of other metabolic processes necessary for the normal maintenance of human existence, such as digestive processes. Therefore, the agency concludes that the preliminary requirement of §101.14(b)(3)(i) is satisfied.

3. The Substances Are Safe and Lawful

a. *Plant sterol esters.* The plant sterol ester petitioner asserts that plant sterol esters are generally recognized as safe (GRAS) for certain uses. In a submission dated January 11, 1999, the petitioner informed FDA of its conclusion that plant sterol esters are GRAS for use in vegetable oil spreads at levels up to 20 percent (corresponding to 1.6 g of plant sterol esters per serving) to supplement the nutritive value of the spread, and to help structure the fat phase and reduce the fat and water content of the spread. The January 11, 1999, submission included the supporting data on which this conclusion was based. FDA responded to this submission in a letter dated April 30, 1999 (Ref. 44). In its response, the agency stated, ''Based on its evaluation, the agency has no questions at this time regarding Lipton's conclusion that vegetable oil sterol esters are GRAS under the intended conditions of use. Furthermore, FDA is not aware of any scientific evidence that

vegetable oil sterol esters would be harmful. The agency has not, however, made its own determination regarding the GRAS status of the subject use of vegetable oil sterol esters'' (Ref. 44). In a letter dated September 24, 1999, the petitioner informed FDA of an additional use of plant sterol esters in dressings for salad (Ref. 45). The letter contained additional safety information to support the new use.

The agency notes that authorization of a health claim for a substance should not be interpreted as affirmation that the substance is GRAS. A review of Lipton's January 11, 1999, submission and of its September 24, 1999, letter to the agency, however, reveals significant evidence supporting the safety of the use of plant sterol esters at the levels necessary to justify a health claim. Moreover, FDA is not aware of any evidence that provides a basis to reject the petitioner's position that the use of plant sterol esters in spreads and dressings for salad up to 1.6 g/serving is safe and lawful. As discussed in section V.B of this document, the level of plant sterol esters necessary to justify a claim is 1.3 g per day. Therefore, FDA concludes that the petitioner has satisfied the requirement of §101.14(b)(3)(ii) to demonstrate that the use of plant sterol esters in spreads and dressings for salad at the levels necessary to justify a claim is safe and lawful.

b. *Plant stanol esters*. Under the health claim petition process, FDA evaluates whether the substance is ''safe and lawful'' under the applicable food safety provisions of the act (§101.14(b)(3)(ii)). For conventional foods, this evaluation involves considering whether the ingredient that is the source of the substance is GRAS, listed as a food additive, or authorized by a prior sanction issued by FDA (see §101.70(f)). Dietary ingredients in dietary supplements, however, are not subject to the food additive provisions of the act (see section 201(s)(6) of the act (21 U.S.C. 321(s)(6)). Rather, they are subject to the new dietary ingredient provisions in section 413 of the act (21 U.S.C. 350b) and the adulteration provisions in section 402 of the act (21 U.S.C. 342). The term ''dietary ingredient'' is defined in section 201(ff)(1) of the act and includes vitamins; minerals; herbs and other botanicals; dietary substances for use by man to supplement the diet by increasing the total daily intake; and concentrates, metabolites, constituents, extracts, and combinations of the preceding ingredients.

A ''new dietary ingredient'' is a dietary ingredient that was not marketed in the United States before October 15, 1994 (section 413(c) of the act). If a dietary supplement contains a new dietary ingredient that has not been present in the food supply as an article used for food in a form in which the food has not been chemically altered, section 413(a)(2) of the act requires the manufacturer or distributor of the supplement to submit to FDA, at least 75 days before the dietary ingredient is introduced or delivered for introduction into interstate commerce, information that is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such new dietary ingredient will reasonably be expected to be safe. FDA reviews this information to determine whether it provides an adequate basis for such a conclusion. Under section 413(a)(2) of the act, there must be a history of use or other evidence of safety establishing that the dietary ingredient, when used under the conditions recommended or suggested in the labeling of the dietary supplement, will reasonably be expected to be safe. If FDA believes that this requirement has not been met, the agency responds to the notification within 75 days from the date of its receipt. Otherwise, no response is sent. If a new dietary ingredient notification has been submitted and a history of use or other evidence of safety exists that establishes a reasonable expectation of safety, the new dietary ingredient may be lawfully marketed in dietary supplements 75 days after the notification is submitted.

As previously noted, the plant stanol ester petitioner requested authorization to make a health claim about plant stanol esters and the risk of CHD in the labeling of both conventional foods and dietary supplements. Because the standards under which the safety and legality of conventional foods and dietary supplements are evaluated differ, the agency is discussing these two proposed uses separately.

i. *Conventional foods*. The plant stanol ester petitioner asserts that plant stanol esters are GRAS. In a submission dated February 18, 1999, the petitioner informed FDA of its conclusion that plant stanol esters are GRAS for use as a nutrient in spreads at a level of 1.7g of plant stanol esters per serving of spread. The February 18, 1999, submission included the supporting data on which this conclusion was based. FDA responded to this submission in a letter dated May 17, 1999 (Ref. 46). In its response, the agency stated, ''Based on its evaluation, the agency has no questions at this time regarding McNeil's conclusion that plant stanol esters are GRAS under the intended conditions of use. Furthermore, FDA is not aware of any scientific evidence that plant stanol esters would be harmful. The agency has not, however, made its own determination regarding the GRAS status of the subject use of plant stanol esters'' (Ref. 46). The petitioner's GRAS determination applies to plant stanol esters whose stanol components are prepared by the hydrogenation of commercially available plant sterol blends, which are obtained as distillates from vegetable oils or as byproducts of the kraft paper pulping process (Ref. 46). In letters dated July 21, 1999, and October 13, 1999, the petitioner informed FDA of additional uses of plant stanol esters in dressings for salad and snack bars (Refs. 47 and 48).

The agency notes that authorization of a health claim for a substance should not be interpreted as affirmation that the substance is GRAS. A review of McNeil's February 18, 1999, submission, however, reveals significant evidence supporting the safety of the use of plant stanol esters at the levels necessary to justify a health claim. Moreover, FDA is not aware of any evidence that provides a basis to reject the petitioner's position that the use of plant stanol esters in spreads, dressings for salad, snack bars, and other foods is safe and lawful. FDA therefore concludes that the petitioner has satisfied the requirement of §101.14(b)(3)(ii) to demonstrate that the use of plant stanol esters in conventional foods at the levels necessary to justify a claim is safe and lawful.

ii. *Dietary supplements*. The petitioner submitted a new dietary ingredient notification for plant stanol esters on August 19, 1999.[2] The new dietary ingredient notification contained several papers that reported the results of studies conducted in humans to test hypocholesterolemic effects of plant stanol esters as well as a reference to the plant stanol ester petitioner's GRAS submission of February 18, 1999, and the agency's response to this submission in a letter dated May 17, 1999 (Ref. 46). In FDA's judgment, the studies submitted in the plant stanol esters new dietary ingredient notification and GRAS submission appeared to provide an adequate basis that a dietary

[2] The notification states that McNeil does not believeplant stanol esters to be a new dietary ingredient requiring submission of a premarket notification, but that McNeil is voluntarily submitting the information that would be required as part of such a notification ''for the purpose of providing the Food and Drug Administration with advance notice concerning its dietary ingredient'' (Ref. 49).

supplement containing plant stanol esters would reasonably be expected to be safe. Therefore, the agency did not respond to the new dietary ingredient notification. Because the safety standard in section 413(a)(2) of the act has been met and the new dietary ingredient notification was submitted more than 75 days ago, plant stanol esters may now be lawfully marketed as dietary ingredients in dietary supplements. Therefore, FDA concludes that the petitioner has satisfied the requirement of §101.14(b)(3)(ii) to demonstrate that the use of plant stanol esters in dietary supplements at the levels necessary to justify a claim is safe and lawful.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between Plant Sterol/Stanol Esters and CHD

FDA's review examined the relationship between plant sterol/stanol esters and CHD by focusing on the effects of dietary intake of this substance on blood cholesterol levels and on the risk of developing CHD. In the 1991 lipids-CVD and dietary fiber-CVD health claim proposals, the agency set forth the scientific basis for the relationship between dietary substances and CVD (56 FR 60727 at 60728 and 56 FR 60582 at 60583). In those documents, the agency stated that there are many risk factors that contribute to the development of CVD, and specifically CHD, one of the most serious forms of CVD and among the leading causes of death and disability. The agency also stated that there is general agreement that elevated blood cholesterol levels are one of the major modifiable risk factors in the development of CVD and, more specifically, CHD.

Several Federal agencies and scientific bodies that have reviewed the matter have concluded that there is substantial epidemiologic evidence that high blood levels of total cholesterol and LDL cholesterol are a cause of atherosclerosis and represent major contributors to CHD (56 FR 60727 at 60728, 56 FR 60582 at 60583, Refs. 18 through 20). Factors that decrease total cholesterol and LDL cholesterol will also tend to decrease the risk of CHD. High-intakes of saturated fat and, to a lesser degree, of dietary cholesterol are associated with elevated blood total and LDL cholesterol levels (56 FR 60727 at 60728). Thus, it is generally accepted that blood total cholesterol and LDL cholesterol levels can influence the risk of developing CHD, and, therefore, that dietary factors affecting these blood cholesterol levels affect the risk of CHD (Refs. 18 through 20).

When considering the effect that the diet or components of the diet have on blood (or serum) lipids, it is important to consider the effect that these factors may have on blood levels of high density lipoprotein (HDL) cholesterol. HDL cholesterol appears to have a protective effect against CHD because it is involved in the regulation of cholesterol transport out of cells and to the liver, from which it is ultimately excreted (Refs. 18 and 50).

For these reasons, the agency based its evaluation of the relationship between consumption of plant sterol/stanol esters and the risk of CHD primarily on changes in blood total and LDL cholesterol resulting from dietary intervention with plant sterol/stanol ester-containing products. A secondary consideration was that beneficial changes in total and LDL cholesterol should not be accompanied by potentially adverse changes in HDL cholesterol. This focus is consistent with that used by the agency in deciding on the dietary saturated fat and cholesterol and CHD health claim, §101.75 (56 FR 60727 and 58 FR 2739); the fiber-containing fruits, vegetables, and grain products and CHD claim, §101.77 (56 FR 60582 and 58 FR 2552); the soluble fiber from certain foods and CHD claim, §101.81 (61 FR 296, 62 FR 3584, 62 FR 28234, and 63 FR 8119) and the soy protein and CHD claim, §101.82 (63 FR 62977 and 64 FR 57700).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

a. *Plant sterol esters and CHD.* The plant sterol esters petitioner submitted 15 scientific studies (Refs. 51 through 60, 61 and 62 (1 study), 63 and 64 (1 study), and 65 through 67) evaluating the relationship between plant sterol esters or plant sterols and blood cholesterol levels in humans. The studies submitted were conducted between 1953 and 2000. The petition included tables that summarized the outcome of each of the studies and a summary of the evidence.

The plant sterol ester petitioner states that since plant sterol esters are hydrolyzed to free sterols and fatty acids in the gastrointestinal tract (see Refs. 68 through 70), and free sterols are the active moiety of plant sterol esters (see Refs. 69 and 71), the literature on free plant sterols has a direct bearing on this petition (Ref. 1, page 14). The agency agrees that the active moiety of the plant sterol ester is the plant sterol and has concluded that studies of the effectiveness of free plant sterols in blood cholesterol reduction are relevant to the evaluation of the evidence in the plant sterol esters petition. Accordingly, FDA included such studies in its evaluation of the relationship between plant sterol esters and reduced risk of CHD if they met the study selection criteria specified in section III.B.2 of this document.

In several previous diet and CHD health claim rulemakings, the agency began its review of scientific evidence in support of the health claim by considering those studies that were published since 1988, the date of publication of the ''Surgeon General's Report on Nutrition and Health'' (Ref. 18), which is the most recent and comprehensive Federal review of the scientific evidence on dietary factors and CHD. That approach was not possible in this instance, however, as the ''Surgeon General's Report on Nutrition and Health'' does not discuss the effects of dietary plant sterols or plant sterol esters on blood cholesterol or CHD. A discussion of the role of dietary sterols in CHD does appear in another roughly contemporaneous source, the National Academy Press publication ''Diet and Health: Implications for Reducing Chronic Disease Risk'' (Ref. 19), which was issued in 1989. That publication states:

Long ago, plant sterols (beta-sitosterol and related compounds) were found to prevent absorption of dietary cholesterol (Best et al., 1955; Farquhar and Sokolow, 1958; Farquhar et al., 1956; Lees et al., 1977; Peterson et al., 1959), apparently by blocking absorption of cholesterol in the intestine (Davis, 1955; Grundy and Mok, 1977; Jandacek et al., 1977; Mattson et al., 1977). More recent reports indicate that these compounds may be more effective in small doses than previously believed (Mattson et al., 1982).

This discussion highlights the previous and current emphasis of research on the topic. Investigations in the 1950's reported the effects of plant sterols on cholesterol absorption using animal models and in a few human studies; work in the 1970's examined beta-sitosterol in the form of a drug product to lower cholesterol in humans. In fact, beta-sitosterol is approved for use as a drug to lower cholesterol (Refs. 72 and 73). More recent research has focused on smaller amounts of plant sterols that are solubilized as fatty acid esters of plant sterols in food products. The agency considers the older research to be of little relevance to the petitioned health claim because it concerned forms and amounts of the substance different from those that are the subject of the

petition. Therefore, FDA included in its review only those studies published from 1982 (the date the National Academy Press publication refers to for the more recent research reports (Ref. 19)) to the present among those submitted by the petitioner (Refs. 51, 52, 57, 58, 61 and 62 (1 study), 63 and 64 (1 study), 65, and 67). In addition to eight studies submitted by the petitioner, FDA also considered two other studies (Refs. 74 and 75) concerning the effects of plant sterol esters on blood cholesterol. These two studies were identified by a literature search (Ref. 76) performed to verify that the totality of publicly available scientific evidence had been submitted to the agency.

In addition to the human studies previously discussed, the plant sterol esters petition also presented some findings from studies that employed animal models. Human studies are weighted most heavily in the evaluation of evidence on a diet and disease relationship; animal model studies can be considered as supporting evidence but cannot serve as the sole basis for establishing that a diet and disease relationship exists. Because there were enough well-controlled studies in humans to evaluate the relationship between plant sterol esters and CHD, FDA did not closely review the studies in animals.

b. *Plant stanol esters and CHD.* The plant stanol ester petitioner submitted 21 scientific studies (Refs. 63 and 64 (1 study), and 67, 77 through 80, 81 and 82 (1 study), and 83 through 96) evaluating the relationship between plant stanol esters or plant stanols and blood cholesterol levels in humans. The studies submitted were conducted between 1993 and 2000. The petition included tables that summarized the outcome of each of the studies and a summary of the evidence.

Stanol esters are hydrolyzed in the gastrointestinal tract to fatty acids and free stanols, and investigators believe there is physiological equivalence of free stanols and stanol esters in affecting blood cholesterol concentrations. Accordingly, the agency concludes that studies of the effectiveness of free plant stanols in blood cholesterol reduction are relevant to the evaluation of the relationship between plant stanol esters and reduced risk of CHD when such studies meet the study selection criteria specified in section III.B.2 of this document.

In several previous diet and CHD health claim rulemakings, the agency began its review of scientific evidence in support of the health claim by considering those studies that were published since 1988, the date of publication of the ''Surgeon General's Report on Nutrition and Health'' (Ref. 18), which is the most recent and comprehensive Federal review of the scientific evidence on dietary factors and CHD. The ''Surgeon General's Report on Nutrition and Health,'' however, did not discuss the effects of dietary plant stanol esters on blood cholesterol or CHD. Although a discussion of the role of dietary sterols in CHD appears in the 1989 National Academy Press publication ''Diet and Health: Implications for Reducing Chronic Disease Risk,'' there is no mention of plant stanol esters in this publication (Ref. 19). In fact, research on the cholesterol-lowering capacity of plant stanol esters has been a recent development. The agency used 1992 as a starting point for its scientific evaluation, because this is the year that the earliest study evaluating the effects of plant stanol esters on blood cholesterol was published. The agency included in its review 24 studies published from 1992 to present that were submitted by the petitioner or otherwise identified (Refs. 58, 63 and 64 (1 study), 67, 74, 77 through 80, 81 and 82 (1 study), and 83 through 97). Of these, 21 studies (Refs. 63 and 64 (1 study), 67, 77 through 80, 81 and 82 (1 study), and 83 through 96) were submitted by the petitioner. Two studies (Refs. 74 and 97) were identified by a literature search (Ref. 76) performed to verify that the totality of publicly available scientific evidence had been submitted to the agency. In addition, one recently published study that was submitted in the plant sterol esters petition included administration of plant stanol esters (Ref. 58). This study was included in the plant stanol ester review.

In addition to the published studies previously discussed, the plant stanol ester petitioner submitted a summary of 10 unpublished studies (Ref. 8, pages 59 through 69). The unpublished studies did not weigh heavily in the agency's review because health claims are authorized based on the totality of publicly available scientific evidence (see section 403(r)(3)(B)(i) of the act and §101.14(c)) and because the summaries of these studies lacked sufficient detail on study design and methodologies.

2. Criteria for Selection of Human Studies on Plant Sterol/Stanol Esters and CHD

The criteria that the agency used to select the most pertinent studies in both health claim petitions were consistent with those that the agency used in evaluating the relationship between other substances and CHD. These criteria were that the studies: (1) Present data and adequate descriptions of the study design and methods; (2) be available in English; (3) include estimates of, or enough information to estimate, intakes of plant sterols or stanols and their esters; (4) include direct measurement of blood total cholesterol and other blood lipids related to CHD; and (5) be conducted in persons who represent the general U.S. population. In the case of criterion (5), these persons can be considered to be adults with blood total cholesterol levels less than 300 mg/dL, as explained below.

In a previous rulemaking (62 FR 28234 at 28238 and 63 FR 8103 at 8107), the agency concluded that hypercholesterolemic study populations were relevant to the general population because, based on data from the National Health and Nutrition Examination Surveys (NHANES) III, the prevalence of individuals with elevated blood cholesterol (i.e., 200 mg/dL or greater) is high, i.e., approximately 51 percent of adults (Ref. 21). The proportion of adults having moderately elevated blood cholesterol levels (i.e., between 200 and 239 mg/dL) was estimated to be approximately 31 percent, and the proportion of adults with high blood cholesterol levels (240 mg/dL or greater) was estimated to be approximately 20 percent (Ref. 21). It is also estimated that 52 million Americans 20 years of age and older would be candidates for dietary intervention to lower blood cholesterol (Ref. 21). As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. Since more than half of American adults have mildly to moderately elevated blood cholesterol levels, FDA considers studies in these populations to be representative of a large segment of the general population. Accordingly, in this rule, the agency has reviewed and considered the evidence of effects of plant sterol/stanol esters on blood cholesterol in mildly and moderately hypercholesterolemic subjects as well as subjects with cholesterol levels in the normal range.

In selecting human studies for review, the agency excluded studies that were published in abstract form because they lacked sufficient detail on study design and methodologies, and because they lacked necessary primary data. Studies using special population groups, such as adults with very high serum cholesterol (mean greater than 300 mg/dL), children with hypercholesterolemia, and persons who had already experienced a myocardial infarction (heart attack) or

who had a diagnosis of noninsulin dependent diabetes mellitus, were also excluded because of questions about their relevance to the general U.S. population.

3. Criteria for Evaluating the Relationship Between Plant Sterol/Stanol Esters and CHD

The evaluation of study design, protocol, measurement, and statistical issues for individual studies serves as the starting point from which FDA determines the overall strengths and weaknesses of the data and assesses the weight of the evidence. FDA's ''Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements'' articulates the agency's approach to evaluating studies supporting diet/disease relationships (Ref. 98). The criteria that the agency used in evaluating the studies for this rulemaking include: (1) Adequacy and clarity of the design (e.g., was the methodology used in the study clearly described and appropriate for answering the questions posed by the study?); (2) population studied (e.g., was the sample size large enough to provide sufficient statistical power to detect a significant effect?); (3) assessment of intervention or exposure and outcomes (e.g., was the dietary intervention or exposure well defined and appropriately measured?); and (4) statistical methods (e.g., were appropriate statistical analyses applied to the data?).

The general study design characteristics for which the agency looked included selection criteria for subjects, appropriateness of controls, randomization of subjects, blinding, statistical power of the studies, presence of recall bias and interviewer bias, attrition rates (including reasons for attrition), potential for misclassification of individuals with regard to dietary intakes, recognition and control of confounding factors (for example, monitoring body weight and control of weight loss), and appropriateness of statistical tests and comparisons. The agency considered whether the intervention studies that it evaluated had been of long enough duration, greater than or equal to 3 weeks duration, to ensure reasonable stabilization of blood lipids.

As discussed above, dietary saturated fat and cholesterol affect blood cholesterol levels (Refs. 19 and 20). Previous reviews by FDA and other scientific bodies have generally concluded that, in persons with relatively higher baseline levels of blood cholesterol, responses to dietary intervention tend to be of a larger magnitude than is seen in persons with more normal blood cholesterol levels (56 FR 60582 at 60587 and Refs. 19 and 20). To take into account these factors, FDA separately evaluated studies on mildly to moderately hypercholesterolemic individuals (persons with elevated blood total cholesterol levels of 200 to 300 mg/dL) and studies on normocholesterolemic individuals (persons with blood total cholesterol levels in the normal range (< 200 mg/dL)). FDA also separately evaluated studies in which the effects of plant sterol/stanol esters were evaluated as part of a ''typical'' American diet (approximately 37 percent of calories from fat, 13 percent of calories from saturated fat, and more than 300 mg of cholesterol daily) and studies in which the test protocols incorporated a dietary regimen that limits fat intake such as the National Heart, Lung, and Blood Institute's National Cholesterol Education Program Step I Diet (intake of 8 to 10 percent of total calories from saturated fat, 30 percent or less of calories from total fat, and cholesterol less than 300 mg/d) (Ref. 99).

C. Review of Human Studies

1. Studies Evaluating the Effects of Plant Sterol Esters on Blood Cholesterol

As discussed in section III. B.1.a of this document, FDA reviewed 10 human clinical studies on plant sterol esters or other plant sterols (Refs. 51, 52, 57, 58, 61 and 62 (1 study), 63 and 64 (1 study), 65, 67, and 74 and 75). Of these, nine met the selection criteria listed in section III.B.2 of this document (Refs. 51, 57, 58, 61 and 62 (1 study), 63 and 64 (1 study), 65, 67 and 74 and 75). These studies are summarized in table 1 at the end of this document and discussed below. The remaining study (Ref. 52) failed to meet the inclusion criteria because the population studied (children with familial hypercholesterolemia) was not representative of the general U.S. population. As supporting evidence, the results of one research synthesis study (Ref. 100) that included a number of the plant sterol ester studies submitted in the petition are discussed in section III.C.1.d of this document.

Studies typically report the amount of free plant sterol consumed rather than the amount of plant sterol ester administered. Where possible, we report both the amount of plant sterol ester and the equivalent free sterol.

(a) *Hypercholesterolemics (serum cholesterol < 300 mg/dL): low saturated fat and cholesterol diets.* One study was submitted as a draft in the plant sterol esters petition because it has been submitted for publication, but has not yet been published other than in abstract form (Ref. 62). FDA reviewed this study but considers the results preliminary until a full report of the study has been published. The preliminary results in this study (Refs. 61 and 62 (1 study)) showed a cholesterol-reducing effect of plant sterol esters in hypercholesterolemic subjects who consumed soybean oil sterol esters as part of a low saturated fat and low cholesterol diet. In this study, 224 men and women with mild-to-moderate hypercholesterolemia instructed to follow a National Cholesterol Education Program Step I diet were randomly assigned to one of three groups: (1) control reduced-fat spread, (2) reduced-fat spread containing 1.76 g/d of plant sterol esters (1.1 g/d free plant sterols) (low intake group), or (3) reduced-fat spread containing 3.52 g/d of plant sterol esters (2.2 g/d free plant sterols) (high-intake test group). All subjects consumed 14 g/d of spread in two 7 g servings/day, with food. Subjects in the low- and high-intake groups who consumed ''80 percent of scheduled servings had decreases in serum total cholesterol of 5.2 and 6.6 percent, and LDL cholesterol of 7.6 and 8.1 percent, respectively, versus control ($p<0.001$). The difference between the two test groups with regard to serum total and LDL cholesterol levels was not statistically significant. HDL cholesterol responses did not differ among the groups. These preliminary results indicate that a plant sterol ester-containing reduced-fat spread, in a diet low in saturated fat and cholesterol, can reduce cholesterol.

(b) *Hypercholesterolemics (serum cholesterol < 300 mg/dL): ''typical'' or ''usual'' diets.* Four studies (Refs. 57, 58, 67, and 74) show a relationship between consumption of plant sterols and reduced blood cholesterol in hypercholesterolemic subjects consuming diets within the range of a typical American diet. A fifth study (Refs. 63 and 64 (1 study)) shows inconclusive results.

Jones et al. (Ref. 58) conducted a controlled feeding crossover study in which diets were based on a fixed-food North American diet formulated to meet Canadian recommended nutrient intakes. This study reported significantly lower plasma total cholesterol (9.1 percent, $p < 0.005$) and LDL cholesterol (13.2 percent, $p < 0.02$) in male subjects consuming 2.94 g/d vegetable oil sterol esters (1.84 g/d free plant sterols delivered in 23 g of margarine each day; daily margarine doses were divided into three equal

portions and added to each meal) for 21 days compared to 21 days on control margarine. Plasma HDL cholesterol did not differ across groups and there was no significant weight change shown by the subjects while consuming any of the margarine mixtures.

Hendriks et al. (Ref. 57) reported the effects of feeding three different levels of vegetable oil sterol esters (1.33, 2.58, and 5.18 g/d corresponding to 0.83, 1.61, and 3.24 g/d free plant sterols, respectively) incorporated in spreads (25 g/d of spread replaced an equivalent amount of the spread(s) habitually used; one-half was consumed at lunch, one-half at dinner) in apparently healthy normocholesterolemic and mildly hypercholesterolemic subjects using a randomized, double-blind placebo-controlled balanced incomplete Latin square design with five treatments and four periods. The vegetable oil sterols were esterified to sunflower oil and the degree of esterification was 82 percent. Blood total and LDL cholesterol levels were reduced compared to the control spread ($p < 0.001$) after 3.5 weeks. Blood total cholesterol decreased by 4.9, 5.9, and 6.8 percent for daily consumption of 1.33, 2.58, and 5.18 g/d plant sterol esters, respectively. For LDL cholesterol these decreases were 6.7, 8.5, and 9.9 percent. No significant differences in cholesterol-lowering effect between the three levels of plant sterol esters could be detected. There were no effects on HDL cholesterol. The subjects' body weight differed after daily consumption of 2.58 and 5.18 g plant sterol esters by 0.3 kilogram (kg) ($p < 0.01$), but this small difference in body weight probably did not affect the study findings.

Another study by Jones et al. (Ref. 74) investigated the effects of a mixture of plant sterols and plant stanols. The plant stanol compound sitostanol made up about 20 percent of the mixture by weight. The remaining sterol component of the mixture was composed mostly of the plant sterols sitosterol and campesterol from tall oil (derived from pine wood). The investigators evaluated the cholesterol-lowering properties of this nonesterified plant sterol/stanol mixture in a controlled feeding regimen based on a ''prudent,'' fixed-food North American diet formulated to meet Canadian recommended nutrient intakes. Thirty-two hypercholesterolemic men were fed either a diet of prepared foods alone or the same diet plus 1.7 g per d of the plant sterol/stanol mixture (in 30 g/d of margarine, consumed during 3 meals) for 30 days in a parallel study design. The plant sterol/stanol mixture had no statistically significant effect on plasma total cholesterol concentrations. However, LDL cholesterol concentrations on day 30 had decreased by 8.9 percent ($p < 0.01$) and 24.4 percent ($p < 0.001$) with the control and plant sterol/stanol-enriched diets, respectively. On day 30, LDL cholesterol concentrations were significantly lower ($p < 0.05$) by 15.5 percent in the group consuming the plant sterol/stanol mixture compared to the control group. HDL cholesterol concentrations did not change significantly during the study.

Weststrate and Meijer (Ref. 67) evaluated the effects of different plant sterols on plasma total and LDL cholesterol in normocholesterolemic and mildly hypercholesterolemic subjects consuming their usual diets with the addition of a test or placebo margarine. A randomized double-blind placebo-controlled balanced incomplete Latin square design with five treatments and four periods of 3.5 weeks was utilized to compare the effect of margarines (30 g/d) with added sterol esters from soybean oil (4.8 g/d; 3 g/d free plant sterol), sheanut oil (2.9 g/d) or ricebran oil (1.6 g/d) or with plant stanol esters (4.6 g/d; 2.7 g/d free plant stanols) to a placebo margarine. The sterol esters from soybean oil were mainly esters from sitosterol, campesterol, and stigmasterol. Plasma total and LDL cholesterol concentrations were significantly reduced, by 8.3 and 13.0 percent ($p < 0.05$), respectively, compared to control, in the soybean oil sterol ester margarine group. Similar reductions were reported in the plant stanol ester margarine group (see discussion of this study in section III. C.2.b of this document). Sterols from sheanut oil and rice bran oil did not have a significant effect on cholesterol levels. No effects on HDL cholesterol concentrations were reported in either the control or any of the test groups. The cholesterol-lowering effects of ingestion of plant sterol/stanol esters on blood cholesterol did not differ between normocholesterolemic and mildly hypercholesterolemic subjects. The authors concluded that both the margarine with plant stanol esters and the margarine with sterol esters from soybean oil were effective in lowering blood total and LDL cholesterol levels without affecting HDL cholesterol concentrations. The authors further suggested that incorporating such substances in edible fat-containing products may substantially reduce the risk of cardiovascular disease in the population.

Two reports of apparently the same study (Refs. 63 and 64) gave inconclusive results regarding the relationship between plant sterol consumption and blood cholesterol levels. Interpretation of this study is complicated by design issues such as concerns about sample size and level of plant sterol administered, but both reports are discussed here and summarized in table 1 of this document because they provide information to assist in determining the minimum level of plant sterol esters necessary to provide a health benefit.

Miettinen and Vanhanen (Refs. 63 and 64 (1 study)) reported the effect of small amounts of sitosterol (700 mg/d free sterols) and sitostanol (700 mg/d free stanols) dissolved in 50 g rapeseed oil (RSO) mayonnaise on serum cholesterol in 31 subjects with hypercholesterolemia for 9 weeks. Subjects did not change their diets except for replacing 50 g/d of dietary fat with the 50 g/d of RSO mayonnaise. It appears that these authors later conducted another 9-week phase of the study using sitostanol esters (1.36 g/d plant stanol esters or 800 mg/d free stanols) dissolved in 50 g RSO mayonnaise. The results of this later phase were reported in the Miettinen reference (Ref. 63), together with the earlier results. The Vanhanen reference (Ref. 64) reports only the earlier results for sitosterol and sitostanol. The Vanhanen reference (Ref. 64) reports reduced serum total cholesterol concentrations (8.5 percent) during the RSO mayonnaise run-in period (stabilization period before the intervention begins) compared to values before the run-in period when combining all subjects. Continuation of RSO mayonnaise in the RSO mayonnaise control group (n=8) during the experimental period had no further effect on blood cholesterol (Refs. 63 and 64). (''N'' refers to the number of subjects.) Neither sitosterol (n=9) nor sitostanol (n=7) significantly altered serum total cholesterol or LDL cholesterol concentrations compared to the RSO control group (n=8) during the experimental period (Refs. 63 and 64). Sitostanol ester (n=7), however, significantly reduced serum total and LDL cholesterol levels compared to the RSO control group (Ref. 63). Furthermore, serum total cholesterol was significantly reduced by 4 percent ($p < 0.05$) during the experimental period in an analysis, which compared the combined plant sterol/stanol groups (sitostanol, sitosterol, and sitostanol ester groups; n=23) to the RSO control group (n=8) (Ref. 63). HDL cholesterol did not change in the plant sterol group compared to the RSO control group (Ref. 63).

The agency notes that it is difficult to decipher from the descriptions in these

reports the amount of plant sterol that was consumed and the level of cholesterol-lowering that was observed. For the sitosterol group, as an example, the method section states that 722 mg/d of sitosterol was added to the RSO mayonnaise, yet the abstract mentions that the RSO mayonnaise contained an additional 625 mg/d of sitosterol (Ref. 64). The results section of the Miettinen reference (Ref. 63) notes that in the combined plant sterol/stanol groups, total and LDL cholesterol levels were slightly but significantly decreased up to 4 percent, yet the abstract states that serum total cholesterol was reduced by about 5 percent in the combined plant sterol/stanol groups. Therefore, FDA considers the results in these reports inconclusive because of inconsistencies in the descriptions of methods and results.

(c) *Normocholesterolemics: ''typical'' or ''usual'' diets.* The results of three studies (Refs. 51, 65, and 75) support a cholesterol-lowering effect of plant sterols in subjects with normal cholesterol values.

Ayesh et al. (Ref. 51), in a controlled feeding study, reported significantly lower serum total cholesterol (18 percent, $p < 0.0001$) and LDL cholesterol (23 percent, $p < 0.0001$) in subjects consuming 13.8 g/d vegetable oil sterol esters (8.6 g/d free plant sterols delivered in 40 g of margarine each day consumed with breakfast and dinner under supervision) for 21 days in males and 28 days in females, compared to subjects consuming a control margarine. These results were calculated as the difference from baseline to days 21 for male and 28 for female; analysis of covariance was adjusted for gender. There was no significant difference in effect on HDL cholesterol between control and plant sterol groups.

In a double-blind crossover study, Sierksma et al. (Ref. 75) showed that daily consumption of 25 g of a spread enriched with free soybean oil sterols (0.8 g/d) for 3 weeks lowered plasma total and LDL cholesterol concentrations respectively by 3.8 percent ($p < 0.05$) and 6 percent ($p < 0.05$) compared with a placebo spread. No effect on plasma HDL cholesterol was found. Subjects followed their usual diets, except that they replaced their usual spread with the test or placebo spread. The investigators also tested sheanut-oil sterols (3.3 g/d) in 25 g of spread and found that the sheanut-oil spread did not lower plasma total and LDL cholesterol levels. The sheanut-oil sterols were primarily phenolic acid esters of 4,4-dimethyl sterols, whereas the soybean-oil product contained 4-desmethyl sterols (the class of sterols containing no methyl group at the carbon 4 atom). The structure of 4-desmethyl sterols is more similar to cholesterol than the structure of 4,4-dimethyl sterols. The investigators stated that soybean-oil sterol structural similarity to cholesterol may offer increased competition with cholesterol for incorporation in mixed micelles, the most likely mechanism for the blood cholesterol-lowering action of plant sterols.

Pelletier et al. (Ref. 65) reported reductions in blood total cholesterol (10 percent, $p < 0.001$) and LDL cholesterol (15 percent, $p < 0.001$), compared to a control period, in subjects consuming 740 mg/d of soybean oil sterols (nonesterified) in 50 g/d of butter for 4 weeks. These results were obtained in a crossover experiment in 12 normocholesterolemic men consuming a controlled, but ''normal'' diet. The total fat intake as a percent of energy was 36.4 percent during both the control and the plant sterol-feeding period. The cholesterol intake during the control period was 436 mg/d; it was 410 mg/d during the plant sterol-feeding period. The diets were designed to have a plant sterol to cholesterol ratio of 2.0, which has repeatedly been shown to affect cholesterol levels in various animal models. There was no significant difference in effect on HDL cholesterol between control and plant sterol groups.

(d) *Other studies: research synthesis study.* FDA considered the results of a March 25, 2000, research synthesis study by Law (Ref. 100) of the effect of plant sterols and stanols on serum cholesterol concentrations. While evaluation of research synthesis studies, including meta-analyses, is of interest, the appropriateness of such analytical techniques in establishing substance/disease relationships has not been determined. There are ongoing efforts to identify criteria and critical factors to consider in both conducting and using such analyses, but standardization of this methodology is still emerging. Therefore, this research synthesis study was considered as supporting evidence but did not weigh heavily within the body of evidence on the relationship between plant sterol/stanol esters and CHD.

Law performed a research synthesis analysis of the effect of plant sterols and stanols on serum cholesterol concentrations by pooling data from randomized trials identified by a Medline search using the term ''plant sterols.'' Law obtained additional data for analysis from other studies cited in papers and review articles. A total of 14 studies that employed either a parallel or crossover design were incorporated in the analysis, consisting of 20 dose comparisons of either plant sterols or plant stanols to a control vehicle. The data described the effects on serum LDL cholesterol concentrations obtained from using spreads (or in some cases, mayonnaise, olive oil, or butter) with and without added plant sterols or stanols. Studies that included children with familial hypercholesterolemia were excluded from the research synthesis analysis. Law included in the research synthesis analysis study populations with severe hypercholesterolemia (mean serum total cholesterol greater than 300 mg/dL) and study populations with previous myocardial infarction or noninsulin dependent diabetes mellitus, as well as study populations with mildly and moderately hypercholesterolemic and/or normal cholesterol concentrations.

Based on the placebo-adjusted reduction in serum LDL cholesterol, the analysis indicated that 2 g of plant sterol (equivalent to 3.2 g/d of plant sterol esters) or plant stanol (equivalent to 3.4 g/d of plant stanol esters) added to a daily intake of spread (or mayonnaise, olive oil, or butter) reduces serum concentrations of LDL cholesterol by an average of 20.9 mg/dL (0.54 millimole per liter (mmol/l)) in people aged 50 to 59 ($p=0.005$), 16.6 mg/dL (0.43 mmol/l) in those aged 40 to 49 ($p=0.005$), and 12.8 mg/dL (0.33 mmol/l) in those aged 30 to 39 ($p=0.005$). The results indicated that the reduction in the concentration of LDL cholesterol at each dose is significantly greater in older people versus younger people. The reductions in blood total cholesterol concentrations were similar to the LDL cholesterol reductions and there was little change in serum concentrations of HDL cholesterol. The results of this analysis also suggested that doses greater than about 2 g of plant sterol (3.2 g/d of plant sterol esters) or stanol (3.4 g/d of plant stanol esters) per day would not result in further reduction in LDL cholesterol (Ref. 100).

Observational studies and randomized trials concerning the relationship between serum cholesterol and the risk of heart disease (Ref. 101) indicate that for people aged 50 to 59, a reduction in LDL cholesterol of about 19.4 mg/dL (0.5 mmol/l) translates into a 25 percent reduction in the risk of heart disease after about 2 years. Studies administering plant sterols and stanols have demonstrated the potential to provide this protection. According to Law, the cholesterol-lowering capacity of plant sterols and stanols is even larger than the effect that could be expected to occur if people ate less animal fat (or saturated fat) (Ref. 100).

(e) *Summary*. In one preliminary report of hypercholesterolemic subjects consuming a low saturated fat and low cholesterol diet (Refs. 61 and 62 (1 study)), plant sterol ester intake was associated with statistically significant decreases in serum total and LDL cholesterol levels. Levels of HDL cholesterol did not change during plant sterol consumption compared to controls. Levels of plant sterol ester found to be effective in lowering serum total and LDL cholesterol levels, in the context of a diet low in saturated fat and cholesterol, were reported to be 1.76 and 3.52 g/d (1.1 and 2.2 g/d of free plant sterol) (Refs. 61 and 62 (1 study)).

In four (Refs. 57, 58, 67, and 74) of five (Refs. 57, 58, 67, 74, and 63 and 64 (1 study)) studies of hypercholesterolemic subjects consuming ''usual'' diets that were generally high in total fat, saturated fat and cholesterol, plant sterol intake was associated with statistically significant decreases in blood total and/or LDL cholesterol levels. Levels of HDL cholesterol were found to be unchanged by consumption of diets containing plant sterol (Refs. 57, 58, 67, 74, and 63 and 64 (1 study)). Levels of plant sterol ester found to be effective in lowering blood total and/or LDL cholesterol levels, in the context of a usual diet, ranged in these studies from 1.33 (Ref. 57) to 5.18 g/d (Ref. 57) (equivalent to 0.83 to 3.24 g/d of free plant sterol).

The results of one study in hypercholesterolemic subjects consuming ''usual'' diets (Refs. 63 and 64 (1 study)) are inconclusive; this may be due to lack of statistical power (e.g., sample size too small to detect the hypothesized difference between groups) or too low a dose of plant sterols to provide an effect. As previously discussed, the descriptions of methods and results also were inconsistent and difficult to interpret. These investigators report no effect of 700 mg/d of plant sterol (equivalent to 1.12 g/d of plant sterol esters) on blood cholesterol levels. However, when the results of three test groups (700 mg/d plant sterol, 700 mg/d plant stanol, 1.36 mg/d plant stanol ester) were pooled and compared to a control group, a statistically significant effect on reducing serum total cholesterol emerged, perhaps because the increased number of subjects in this pooled analysis artificially increased the ability to detect a difference.

In three of three studies (Refs. 51, 65, and 75) of healthy adults with normal blood cholesterol levels consuming a ''usual'' diet, plant sterol intake was associated with statistically significant decreases in both blood total and LDL cholesterol levels. HDL cholesterol levels were not significantly affected by plant sterol intake. Levels of plant sterol found to be effective in lowering blood total and LDL cholesterol ranged in these studies from 0.74 (Ref. 65) to 8.6 g/d (equivalent to 1.2 to 13.8 g/d of plant sterol esters) (Ref. 51).

Based on these studies, FDA finds there is scientific evidence for a consistent, clinically significant effect of plant sterol esters on blood total and LDL cholesterol. The cholesterol-lowering effect of plant sterol esters is consistent in both mildly and moderately hypercholesterolemic populations and in populations with normal cholesterol concentrations. The cholesterol-lowering effect of plant sterol esters has been reported in addition to the effects of a low saturated fat and low cholesterol diet. It has been consistently reported that plant sterols do not affect HDL cholesterol levels. These conclusions are drawn from the review of the well controlled clinical studies and are supported by the research synthesis study of Law (Ref. 100).

2. Studies Evaluating the Effects of Plant Stanol Esters on Blood Cholesterol

As discussed in section III.B.1.b of this document, FDA reviewed 24 studies (Refs. 58, 63 and 64 (1 study), 67, 74, 77 through 80, 81 and 82 (1 study), and 83 through 97) on plant stanols, including both free and esterified forms. Of these, 15 met the selection criteria listed in section III.B.2. of this document (Refs. 58, 63 and 64 (1 study), 67, 74, 77, 78, 80, 81 and 82 (1 study), 88 through 92, 94, and 97). These studies are summarized in table 2 at the end of this document and discussed below. The nine remaining studies (Refs. 79, 83 through 87, 93, 95, and 96) failed to meet the selection criteria because of insufficient information to evaluate the design and method of the study or because the populations studied were not considered representative of the general U.S. adult population. For example, some of the studies were performed in children with type II or familial hypercholesterolemia; others used adult subjects with mean serum total cholesterol levels > 300 mg/dL or subjects with preexisting disease (e.g., diabetes). As supporting evidence, the results of a community intervention study (Ref. 102) and a research synthesis study (Ref. 100) that included a number of the plant stanol ester studies submitted in the petition are discussed in section III.C.2.d of this document.

Studies typically report the amount of free plant stanol consumed, rather than the levels of stanol esters administered. Where possible, we report both the amount of plant stanol ester and the equivalent free stanol.

(a) *Hypercholesterolemics (serum cholesterol < 300 mg/dL): low saturated fat and cholesterol diets*. Two studies (Refs. 77 and 80) showed a relationship between consumption of plant stanol esters and reduced blood cholesterol in hypercholesterolemic subjects who consumed plant stanol esters as part of a low saturated fat and low cholesterol diet.

Andersson et al. (Ref. 80) randomized subjects to receive one of three test diets: Either a low fat margarine containing 3.4 g/d plant stanol esters (2 g/d of plant stanols) with a controlled, low saturated fat, low cholesterol diet; a control low fat margarine containing no plant stanol esters with a controlled, low saturated fat, low cholesterol diet; or to continue their normal diet with the addition of the margarine containing 3.4 g/d plant stanol esters (2 g/d of plant stanols). Serum total and LDL cholesterol were reduced in all three groups after 8 weeks. The group consuming the margarine containing plant stanol esters with the low saturated fat, low cholesterol diet showed 12 percent ($p < 0.0035$) and 15 percent ($p < 0.0158$) reductions in serum total and LDL cholesterol levels, respectively, compared to the group that consumed a control low fat margarine with a controlled, low saturated fat, low cholesterol diet. The serum total and LDL cholesterol reductions were reported to be 4 percent ($p < 0.0059$) and 6 percent ($p < 0.0034$), respectively, for the group consuming the margarine containing plant stanol esters with the low saturated fat, low cholesterol diet compared to the group consuming the margarine containing plant stanol esters with a normal diet. Although a normal diet and control margarine group was not included, this study suggests that 3.4 g/d of plant stanol esters in conjunction with a normal or controlled, low saturated fat, low cholesterol diet can significantly lower serum cholesterol levels. There was no change in HDL cholesterol levels in the normal diet, plant stanol ester margarine group. The study results suggest that the reduction in serum cholesterol levels is significantly greater when the plant stanol esters are consumed as part of a diet low in saturated fat and cholesterol. HDL cholesterol was decreased, however, in subjects in both low saturated fat, low cholesterol diet groups, and this result was statistically significant in the group that consumed the plant stanol ester margarine in conjunction with this diet.

Hallikainen et al. (Ref. 77) randomly assigned 55 mildly hypercholesterolemic subjects, after a 4-week high fat diet (36 to 38 percent of energy from fat), to one of three low fat margarine groups: a 3.9 g/d (2.31 g/d of free plant stanols) wood stanol ester-containing margarine, a 3.9 g/d (2.16 g/d of free plant stanols) vegetable oil stanol ester-containing margarine, or a control margarine group. The groups consumed the margarines for 8 weeks as part of a diet resembling that of the National Heart, Lung, and Blood Institute's National Cholesterol Education Program Step II diet (a diet in which saturated fat intake is less than 7 percent of calories and cholesterol is less than 200 mg/d) (Ref. 99). During the experimental period, the serum total cholesterol reduction was significantly greater in the wood stanol ester-containing margarine (10.6 percent, $p < 0.001$) and vegetable oil stanol ester-containing margarine (8.1 percent, $p < 0.05$) groups than in the control group, but no significant differences were found between the wood stanol ester-containing margarine and vegetable oil stanol ester-containing margarine groups. The LDL cholesterol reduction was significantly greater in the wood stanol ester-containing margarine (13.7 percent $p < 0.01$) group than in the control group. For the vegetable oil stanol ester-containing margarine group, the LDL cholesterol reduction was 8.6 percent greater than in the control, but the difference was not statistically significant ($p= 0.072$). However, there were no significant differences reported between the wood stanol ester-containing margarine and vegetable oil stanol ester-containing margarine groups for LDL cholesterol. HDL cholesterol concentrations did not change during the study. The authors state, ''* * * that plant stanols can reduce serum cholesterol concentrations, even in conjunction with a markedly low dietary cholesterol intake, indicates that plant stanols must inhibit not only the absorption of dietary cholesterol but also that of biliary cholesterol.''

The results of another study (Ref. 97) did not show a relationship between consumption of plant stanols and blood cholesterol in hypercholesterolemic subjects who consumed plant stanols as part of a low saturated fat and low cholesterol diet. In this study, Denke (Ref. 97) tested the cholesterol-lowering effects of dietary supplementation with plant stanols (3 g/d suspended in safflower oil and packed into gelatin capsules) in 33 men with moderate hypercholesterolemia who were consuming a Step 1 diet. Plant stanol consumption did not significantly lower plasma total cholesterol or LDL cholesterol compared with the Step 1 diet alone. HDL cholesterol levels were also unchanged. The authors state that although previous reports suggested that low dose plant stanol consumption is an effective means of reducing plasma cholesterol concentrations, its effectiveness may be attenuated when the diet is low in cholesterol. The agency notes that, unlike several of the studies submitted with the petition, this study was not a randomized, placebo-controlled, double-blind study, but rather a fixed sequence design. One result of this design was that during the plant stanol dietary supplement phase the subjects consumed an additional 12 g of fat that they did not consume in other phases because each dietary supplement contained 1g of safflower oil and subjects were instructed to consume 4 capsules per meal (subjects were to consume a total of 12 capsules (3000 mg) in three divided doses during three meals). The agency does not give as much weight to this study as it does the studies in which subjects were randomly assigned to placebo or plant stanol arms of a study with all else being equal among the participants.

(b) *Hypercholesterolemics (serum cholesterol < 300 mg/dL): ''typical'' or ''usual'' diets.* Eight studies (Refs. 63 and 64 (1 study), 67, 78, 81 and 82 (1 study), 88 through 90, and 94) show a relationship between consumption of plant stanols and reduced blood total and LDL cholesterol in hypercholesterolemic subjects consuming diets within the range of a typical American diet. Two studies (Refs. 58 and 74) show a relationship between consumption of plant stanols and reduced LDL cholesterol, but not blood total cholesterol, in the same category of subjects consuming diets within the range of a typical American diet.

Hallikainen et al. (Ref. 88) conducted a single-blind, crossover study in which 22 hypercholesterolemic subjects consumed margarine containing four different doses of plant stanol esters, including 1.4, 2.7, 4.1, and 5.4 g/d (0.8, 1.6, 2.4, and 3.2 g/d of free plant stanols) for 4 weeks each. These test margarine phases were compared to a control margarine phase, also 4 weeks long. All subjects followed the same standardized diet throughout the study, and the order of the margarine phases was randomized. Serum total cholesterol concentration decreased (calculated in reference to control) by 2.8 percent for the 1.4 g/d dose ($p=0.384$), 6.8 percent for the 2.7 g/d dose ($p< 0.001$), 10.3 percent for the 4.1 g/d dose ($p<0.001$) and 11.3 percent ($p< 0.001$) for the 5.4 g/d dose of plant stanol esters. The respective decreases for LDL cholesterol were 1.7 percent ($p=0.892$), 5.6 percent ($p< 0.05$), 9.7 percent ($p<0.001$) and 10.4 percent ($p<0.001$). Although decreases were numerically greater with 4.1 and 5.4 g doses than with the 2.7 g dose, these differences were not statistically significant ($p=0.054$-0.516). This study demonstrates that at least 2.7 g/d of plant stanol esters can significantly reduce both serum total cholesterol and LDL cholesterol levels by at least 5.6 percent compared to control. No statistically significant changes in HDL cholesterol were observed with any of the plant stanol ester margarines.

Gylling and Miettinen (Ref. 78) reported the serum cholesterol-lowering effects of feeding different campestanol/sitostanol mixtures in margarine or butter in 23 postmenopausal women using a double-blind crossover design. The participants were randomly allocated to study periods where they consumed 25 g/d of plant stanol-containing rapeseed oil margarine with either 5.4 g sitostanol ester-rich (3.18 g of free plant stanols; wood-derived plant stanol esters with a campestanol to sitostanol ratio 1:11) plant stanol esters or 5.7 g campestanol ester-rich (3.16 g of free plant stanols; vegetable oil-derived plant stanol esters with a campestanol to sitostanol ratio 1:2) plant stanol esters. After 6 weeks, subjects consumed the other margarine for an additional 6 weeks. Following an 8 week home diet wash-out period, 21 of the subjects were randomly assigned to consume either 25 g of butter or 4.1 g/d plant stanol esters (2.43 g/d of free plant stanols with a campestanol to sitostanol ratio 1:1) in 25 g of butter for an additional 5 weeks. Throughout the study, subjects consumed their usual diets, except that they were instructed to substitute the 25 g/d of butter or margarine consumed as part of the study for 25 g of their normal daily fat intake. Both the wood and vegetable stanol ester margarines lowered serum total cholesterol by 4 and 6 percent, respectively, compared to baseline ($p < 0.05$ for both). LDL cholesterol was reduced by 8 and 10 percent with the wood and vegetable stanol ester margarines, respectively, versus baseline ($p < 0.05$ for both). Furthermore, HDL cholesterol was increased by 6 and 5 percent ($p < 0.05$) with the wood and vegetable stanol ester margarines, respectively, versus baseline, so the LDL/HDL cholesterol ratio was reduced by 15 percent ($p <$

0.05 for both). The two plant stanol mixtures in margarine appeared equally effective in reducing serum cholesterol. Butter alone increased serum total and LDL cholesterol by 4 percent ($p < 0.05$ for total cholesterol, not statistically significant for LDL cholesterol). Although the plant stanol ester butter did not significantly reduce serum total and LDL cholesterol compared to baseline, the plant stanol ester butter was found to decrease serum total cholesterol by 8 percent and LDL cholesterol by 12 percent ($p < 0.05$ for both) compared to butter alone. There was no significant change in HDL cholesterol between the two butter groups. The study reported that plant stanol esters are able to decrease serum total and LDL cholesterol in a saturated environment, i.e., when plant stanol ester is consumed in butter, a high saturated-fat food, and compared to the effects of butter without plant stanol esters. The observation that the plant stanol ester butter did not reduce blood cholesterol levels compared to baseline suggests that plant stanol esters do not completely counteract the impact of a high saturated-fat diet on blood cholesterol levels.

Nguyen et al. (Ref. 90) examined the blood cholesterol-lowering effects in subjects consuming either a European spread containing 5.1 g/d plant stanol esters (3 g/d free plant stanols), a U.S.-reformulated spread containing 5.1 g/d plant stanol esters (3 g/d free plant stanols), a U.S.-reformulated spread containing 3.4 g/d plant stanol esters (2 g/d of free plant stanols), or a U.S.-reformulated spread without plant stanol esters for 8 weeks. The subjects consumed a total of 24 g of spread in three 8 g servings a day, but made no other dietary changes. Serum total cholesterol ($p < 0.001$) and LDL cholesterol ($p < 0.02$) levels were significantly reduced in all three test groups compared with the placebo group at all time points during the ingredient phase. The U.S. spread containing 5.1 g/d plant stanol esters lowered serum total and LDL cholesterol by 6.4 and 10.1 percent, respectively, when compared to baseline ($p < 0.001$). Subjects consuming the 5.1 g/d plant stanol esters European spread achieved a 4.7 percent reduction in serum total cholesterol and a 5.2 percent reduction in LDL cholesterol compared to baseline ($p < 0.001$). The 3.4 g/d plant stanol ester U.S. spread group showed a 4.1 percent reduction in both serum total and LDL cholesterol levels compared to baseline ($p < 0.001$). HDL cholesterol levels were unchanged throughout the study.

Weststrate and Meijer (Ref. 67) evaluated the effects of different plant sterols and stanols on plasma total and LDL cholesterol in normocholesterolemic and mildly hypercholesterolemic subjects. The subjects consumed their usual diets with the addition of a test or placebo margarine. A randomized double-blind placebo-controlled balanced incomplete Latin square design with five treatments and four periods of 3.5 weeks was utilized to compare the effect of margarines (30 g/d) with added plant stanol esters (4.6 g/d; 2.7 g/d free plant stanols), or with added plant sterol esters from sheanut oil (2.9 g/d), ricebran oil (1.6 g/d), or soybean oil (4.8 g/d; 3 g/d free plant sterol) to a placebo margarine. Plasma total and LDL cholesterol concentrations were significantly reduced by 7.3 and 13.0 percent ($p < 0.05$), respectively, compared to control, in the plant stanol ester margarine group. Similar reductions were reported in the soybean oil sterol ester margarine group (see discussion of this study in section III.C.1.b of this document). No effect on HDL cholesterol concentrations was reported during the study.

In a long term study conducted in Finland (Ref. 89), 153 mildly hypercholesterolemic subjects were instructed to consume 24 g/d of canola oil margarine or the same margarine with added plant stanol esters for a targeted consumption of 5.1 g/d plant stanol esters (3 g/d free plant stanols), without other dietary changes. At the end of 6 months, those consuming plant stanol esters were randomly assigned either to continue the test margarine with a targeted intake of 5.1 g/d plant stanol esters or to switch to a targeted intake of 3.4 g/d plant stanol esters (2 g/d free plant stanols) for an additional 6 months. The control group also continued for another 6 months. Based on measured margarine consumption, average plant stanol ester intakes were 4.4 g/d (in the 5.1 g/d target group) and 3.1 g/d (in the 3.4 g/d target group). The mean 1 year reduction in serum total cholesterol was 10.2 percent in the 4.4 g/d plant stanol ester group, as compared with an increase of 0.1 percent in the control group. The difference in the change in serum total cholesterol concentration between the two groups was -24 mg/dL ($p < 0.01$). The respective reductions in LDL cholesterol were 14.1 percent in the 4.4 g/d plant stanol ester group and 1.1 percent in the control group. The differences in the change in LDL cholesterol concentration between the two groups was -21 mg/dL ($p < 0.001$). Significant reductions in serum total and LDL cholesterol were also reported after consuming plant stanol esters for 6 months. Unlike the group consuming 4.4 g/d of plant stanol esters for 12 months, where continued reductions in serum total and LDL cholesterol were observed from 6 to 12 months, the reduction in plant stanol ester intake to 3.1 g/d at 6 months was not followed by any further decrease in the serum total and LDL cholesterol concentrations. Serum HDL cholesterol concentrations were not affected by plant stanol esters.

Vanhanen et al. (Ref. 94) reported the hypocholesterolemic effects of 1.36 g/d of plant stanol esters (800 mg/d of free plant stanols) in RSO mayonnaise for 9 weeks followed by 6 weeks of consumption of 3.4 g/d of plant stanol esters (2 g/d of free plant stanols) in RSO mayonnaise compared to a group receiving RSO mayonnaise alone. Subjects consumed their usual diets, except that they were instructed to substitute the RSO mayonnaise for 50 g/d of their normal daily fat intake. After 9 weeks of consumption of the lower dose plant stanol ester mayonnaise, the changes in serum levels of total and LDL cholesterol were -4.1 percent ($p < 0.05$) and -10.3 percent (not statistically significant), respectively, as compared to the control. Greater reductions in both serum total and LDL cholesterol were observed after consumption of 3.4 g/d of plant stanol esters for an additional 6 weeks ($p < 0.05$). The changes in serum levels of total and LDL cholesterol were -9.3 percent and -15.2 percent, respectively, for subjects consuming 3.4 g/d of plant stanol esters as compared to control. Plant stanol ester consumption in RSO mayonnaise did not change HDL cholesterol levels compared to control RSO mayonnaise.

Blomqvist et al. (Ref. 81) and Vanhanen et al. (Ref. 82) separately reported the results of another study showing plasma cholesterol-lowering effects of plant stanol esters dissolved in RSO mayonnaise. After subjects replaced 50 g of their daily fat intake by 50 g of RSO mayonnaise for 4 weeks, they were randomized into two groups, one that continued with the original RSO mayonnaise (control group) and the other with RSO mayonnaise in which 5.8 g of plant stanol ester was dissolved (3.4 g/d of free plant stanols in 50 g of mayonnaise preparation). After 6 weeks on the plant stanol ester-enriched diet, plasma total and LDL cholesterol were reduced from 225 ± 27 (control group) to $2- \pm 34$ mg/dL (plant stanol ester group) ($p < 0.001$) and from 134 ± 18 (control group) to 124 ± 32 mg/dL (plant stanol ester) ($p < 0.01$), respectively (Ref. 81). In the report by

Blomqvist (Ref. 81), HDL cholesterol was reported to be significantly lower in the plant stanol ester group compared to the control group. Using the same data, with the exception that the number of control subjects utilized in the analysis was 33 rather than 32 as in the Blomqvist report, HDL cholesterol was reported to be unchanged in the report by Vanhanen (Ref. 82). The agency does not give as much weight to this study because the two reports lacked sufficient detail on the reason for the varying number of control subjects.

Two reports of apparently the same study (Refs. 63 and 64) gave inconclusive results regarding the relationship between plant stanol ester consumption and blood cholesterol levels. Interpretation of this study is complicated by design issues such as concerns about sample size and level of plant sterol/stanol administered, but both reports are discussed here and summarized in table 2 of this document because they provide information to assist in determining the minimum level of plant stanol esters necessary to provide a health benefit.

Miettinen and Vanhanen (Refs. 63 and 64 (1 study)) reported the effect of small amounts of sitosterol (700 mg/d free sterols) and sitostanol (700 mg/d free stanols) dissolved in 50 g RSO mayonnaise on serum cholesterol in 31 subjects with hypercholesterolemia for 9 weeks. Subjects did not change their diets except for replacing 50 g/d of dietary fat with the 50 g/d of RSO mayonnaise. It appears that these authors later conducted another 9-week phase of the study using sitostanol esters (1.36 g/d plant stanol esters or 800 mg/d free stanols) dissolved in 50 g RSO mayonnaise. The results of this later phase were reported in the Miettinen reference (Ref. 63), together with the earlier results. The Vanhanen reference (Ref. 64) reports only the earlier results for sitosterol and sitostanol. The Vanhanen reference (Ref. 64) reports reduced serum total cholesterol (8.5 percent) concentrations during the RSO mayonnaise run-in period compared to values before the run-in period when combining all subjects. Continuation of RSO mayonnaise in the RSO mayonnaise control group (n=8) during the experimental period had no further effect on blood cholesterol (Refs. 63 and 64). Free sitostanol (n=7) did not significantly alter serum total cholesterol or LDL cholesterol compared to the RSO control group during the experimental period (Refs. 63 and 64). HDL cholesterol also did not change in the free sitostanol group (Ref. 63). Serum total and LDL cholesterol were significantly reduced in the sitostanol ester group (n=7), however (Ref. 63). The mean change in serum total cholesterol from baseline was −7.4 mg/dL in the sitostanol ester group, compared to +4.6 mg/dL in the control group ($p < 0.05$). The mean change in LDL cholesterol from baseline was -7.7 mg/dL in the sitostanol ester group compared to +3.1 mg/dL in the control group ($p < 0.05$). A statistically significant increase in HDL cholesterol from baseline, however, was reported in the sitostanol ester-treated group (Ref. 63).

The agency notes that it is difficult to decipher from the descriptions in these reports the amount of plant stanol ester that was consumed and the level of cholesterol-lowering that was observed. For the sitostanol ester group, as an example, the experimental design section states that 800 mg/d of sitostanol transesterified with RSO fatty acids was added to the RSO mayonnaise, yet table 1 of this document shows that the amount of sitostanol ester in the RSO mayonnaise was 830 mg (Ref. 63). Since the conversion factor to obtain the stanol ester equivalent of a given amount of free stanol is 1.7, the amounts of sitostanol and sitostanol ester given in the experimental design section and table 1 cannot both be correct. Based on information in the results section of the Miettinen reference (Ref. 63), serum total cholesterol reduction in the sitostanol ester group can be calculated to be approximately 18 percent as compared to control, yet the abstract of the Vanhanen reference mentions that sitostanol ester reduced serum total cholesterol by 7 percent (Ref. 63). Therefore, FDA considers the results in these reports inconclusive because of inconsistencies in the descriptions of methods and results.

Two studies (Refs. 58 and 74) show a relationship between consumption of plant stanols and reduced LDL cholesterol, but not blood total cholesterol, in subjects consuming a diet within the range of a typical American diet, although the diet was a controlled feeding regimen formulated to meet Canadian recommended nutrient intakes.

Jones et al. (Ref. 58) reported the effects of consuming 2.94 g/d of plant sterol esters in 23 g of margarine, 3.31 g/d of plant stanol esters in 23 g of margarine (1.84 g/d free plant stanols; daily margarine doses were divided into three equal portions and added to each meal) and 23 g/d of control margarine for 21 days each, using a controlled feeding crossover study design. During the experimental period, subjects consumed a fixed-food North American diet formulated to meet Canadian recommended nutrient intakes. The results from consumption of the plant sterol ester margarine are discussed in section III.C.1.b of this document. Plasma LDL cholesterol levels were reduced by 6.4 percent ($p < 0.02$) in the plant stanol ester group compared to the control group. Plasma total cholesterol was not significantly reduced in the plant stanol ester group. Plasma HDL cholesterol did not differ across groups, and there was no significant weight change shown by the subjects while consuming any of the margarine mixtures.

Jones et al. (Ref. 74) evaluated the effects of a mixture of plant stanols and plant sterols. The plant stanol compound sitostanol made up about 20 percent of the mixture by weight. The remaining sterol component of the mixture was mostly composed of the plant sterols sitosterol and campesterol. These investigators evaluated the cholesterol-lowering properties of this nonesterified plant sterol/stanol mixture in a controlled feeding regimen based on a ''prudent,'' fixed-food North American diet formulated to meet Canadian recommended nutrient intakes. Thirty-two hypercholesterolemic men were fed either a diet of prepared foods alone or the same diet plus 1.7 g/d of the plant sterol/stanol mixture (in 30 g/d of margarine, consumed during 3 meals) for 30 days in a parallel study design. The plant sterol/stanol mixture had no statistically significant effect on plasma total cholesterol concentrations. However, LDL cholesterol concentrations on day 30 had decreased by 8.9 percent ($p < 0.01$) and 24.4 percent ($p < 0.001$) with the control and plant sterol/stanol-enriched diets, respectively. On day 30, LDL cholesterol concentrations were significantly lower ($p < 0.05$) by 15.5 percent in the group consuming the plant sterol/stanol mixture compared to the control group. HDL cholesterol concentrations did not change significantly during the study.

(c) *Normocholesterolemics: ''typical'' or ''usual'' diets.* Two studies (Refs. 91 and 92) show a relationship between consumption of plant stanols and reduced blood cholesterol in subjects with normal cholesterol concentrations consuming a typical American diet.

Plat and Mensink (Ref. 92) examined the effects of two plant stanol ester preparations in healthy subjects with normal serum cholesterol levels. During a 4 week run-in period, 112 subjects consumed a rapeseed oil margarine (20 g/d) and shortening (10 g/d). For the next 8 weeks, 42 subjects continued with these products, while the other

subjects received margarine (20 g/d) and shortening (10 g/d) with a vegetable oil-based stanol ester mixture (6.8 g/d plant stanol esters or 3.8 g/d free plant stanols) or pine wood-based stanol ester mixture (6.8 g/d plant stanol ester or 4 g/d plant stanol). Subjects did not change their diets except for replacing 30 g/d of dietary fat with the 30 g/d of test margarine and shortening. In the vegetable oil plant stanol ester group, the mean change in serum total cholesterol from baseline was −16.6 mg/dL, compared to −1.6 mg/dL in the control group ($p < 0.001$). In the pine wood stanol ester group, the mean change in serum total cholesterol from baseline was −16.3 mg/dL compared to −1.6 mg/dL in the control group ($p < 0.001$). Compared to consumption of a control margarine and shortening, consumption of 6.8 g/d of vegetable oil-based stanol esters lowered LDL cholesterol by 14.6 ± 8.0 percent ($p < 0.001$). Consumption of 6.8 g/d of the pine wood-based stanol esters showed a comparable decrease of 12.8 ± 11.2 percent ($p < 0.001$) in comparison to control margarine consumption. Decreases in LDL cholesterol were not significantly different between the two experimental groups ($p= 0.793$). Serum HDL cholesterol did not change during the study.

Niinikoski et al. (Ref. 91) randomly assigned 24 subjects with normal serum cholesterol levels to use either a plant stanol ester margarine (5.1 g/d plant stanol esters; 3 g/d of free plant stanols) or ordinary rapeseed oil margarine (control) for 5 weeks. Subjects followed their normal diets, except for substituting the test or control margarine for normal dietary fat intake. During the study period the mean plus/minus standard deviation for serum total cholesterol decreased more in the plant stanol ester spread group (-31 plus/minus 19.4) compared to the ordinary rapeseed oil spread group (-11.6 plus/minus 19.4) ($p < 0.05$). Serum non-HDL (LDL plus very low density lipoprotein) cholesterol also decreased more in the plant stanol ester group (-31 plus/minus 23) compared to the control group (-11.6 plus/minus 19.4) ($p < 0.05$), but the plant stanol ester spread did not influence HDL cholesterol concentration ($p= 0.71$ between groups).

(d) *Other studies: research synthesis study.* As discussed in section III.C.1.d of this document, the agency considered the results of a March 25, 2000, research synthesis study (Ref. 100) of the effect of plant sterols and plant stanols on serum cholesterol concentrations as supporting evidence on the relationship between plant sterol/stanol esters and CHD. In this research synthesis study, the combined effect of plant sterols and stanols on serum cholesterol concentrations was analyzed by pooling data from 14 randomized trials that employed either a parallel or crossover design, consisting of 20 dose comparisons of either plant sterols or plant stanols to a control vehicle. The data described the effects on serum LDL cholesterol concentrations obtained from using spreads (or, in some cases, mayonnaise, olive oil, or butter) with and without added plant sterols or stanols.

Based on the placebo-adjusted reduction in serum LDL cholesterol, the analysis indicated that 2 g of plant sterol (equivalent to 3.2 g/d of plant sterol esters) or plant stanol (equivalent to 3.4 g/d of plant stanol esters) added to a daily intake of spread (or mayonnaise, olive oil, or butter) reduces serum concentrations of LDL cholesterol by an average of 20.9 mg/dL in people aged 50 to 59 ($p=0.005$), 16.6 mg/dL in those aged 40 to 49 ($p=0.005$), and 12.8 mg/dL in those aged 30 to 39 ($p=0.005$). The results indicated that the reduction in the concentration of LDL cholesterol at each dose is significantly greater in older people versus younger people. Reductions in blood total cholesterol concentrations were similar to the LDL cholesterol reductions and there was little change in serum concentrations of HDL cholesterol. The results of this analysis also suggested that doses greater than about 2 g of plant sterol (3.2 g/d of plant sterol esters) or stanol (3.4 g/d of plant stanol esters) per day would not result in further reduction in LDL cholesterol.

Observational studies and randomized trials concerning the relationship between serum cholesterol and the risk of heart disease (Ref. 101) indicate that for people aged 50 to 59, a reduction in LDL cholesterol of about 19.4 mg/dL (0.5 mmol/l) translates into a 25 percent reduction in the risk of heart disease after about 2 years. Studies administering plant sterols and stanols have demonstrated the potential to provide this protection. According to Law, the cholesterol-lowering capacity of plant sterols and stanols is even larger than the effect that could be expected to occur if people ate less animal fat (or saturated fat) (Ref. 100).

Community Intervention Study

The plant stanol ester petitioner also submitted a community intervention study by Puska et al. (Ref. 102) that described the relationship between consumption of plant stanol ester-containing margarine and serum total cholesterol concentrations in North Karelia, Finland. FDA considered this study as supporting evidence for the relationship between plant stanol esters and CHD. In the early 1970's, Finland had the highest cardiovascular-related mortality in the world. Since 1972, active prevention programs carried out in the framework of the North Karelia Project have reduced these high rates. A central target of these programs was promotion of dietary changes to reduce population cholesterol levels. In spite of great success in the 1970's and 1980's, cholesterol levels at the end of the 1980's remained, by international standards, relatively high in North Karelia, especially in rural areas. The Village Cholesterol Competition was introduced as an innovative method to promote further cholesterol reduction in the population. Puska et al. (Ref. 102) describe two competitions (1991 and 1997) in which serum cholesterol values of subjects ages 20 to 70 years in participating villages were measured twice during a 2 month period. The village with the greatest mean reduction in serum cholesterol was awarded a monetary prize. The 1991 competition is not relevant to this interim rule because plant stanol ester-containing spreads were not available at the time. However, the 1997 competition is relevant because plant stanol ester-containing spreads had become available and, as discussed below, were consumed by a significant number of participants. Subjects were asked to complete a questionnaire about demographic factors, risk factors, dietary changes, and physical activity. The questionnaire included specific questions on changes in use of milk, fat spreads, fat used for baking, and food preparation. Participating villages were responsible for arranging intervention activities and blood cholesterol measurements.

Sixteen villages, with a total of 1,333 participants, were included in the results. There were 8 weeks between the initial and final blood cholesterol measurements. Approximately 24 percent of the participants changed their fat spread on bread to recommended alternatives (e.g., from butter to margarine), but 57 percent did not make any changes in their choice of spread. Use of plant stanol ester-containing spread increased nearly fivefold, whereas use of butter, butter-vegetable oil mixture and normal vegetable margarine use declined. Approximately 200 participants began to use plant stanol ester spread during the competition as their fat spread on bread.

The winning village had an average serum total cholesterol reduction of 16 percent ($p < 0.001$). Results for each village were calculated as the mean percent reduction in individual

cholesterol levels. The mean reduction in serum total cholesterol of all participating villages was 9 percent ($p < 0.001$). In 14 of 16 villages, the reduction between the initial and final blood cholesterol measurements was statistically significant ($p < 0.05$). The investigators observed that the greater the self-reported daily use of the plant stanol ester spread, the greater the serum cholesterol reduction. Furthermore, of those who reported using more than 5 teaspoonfuls per day of plant stanol ester-containing spread, an average serum total cholesterol reduction of 21.3 percent was achieved.

(e) *Summary*. In two (Refs. 77 and 80) of three (Refs. 77, 80, and 97) studies of hypercholesterolemic subjects consuming low saturated fat and low cholesterol diets, plant stanol ester intake was associated with statistically significant decreases in total and LDL cholesterol levels when compared to a control group. Levels of HDL cholesterol were found to be unchanged (Refs. 77, 80, and 97).

Levels of plant stanol esters found to be effective in lowering total and LDL cholesterol levels, in the context of a diet low in saturated fat and cholesterol, were 3.4 g (Ref. 80) and 3.9 g (Ref. 77) (equivalent to 2 and 2.31 g of free plant stanols, respectively). Other results from one of these studies (Ref. 77) reported a statistically significant effect of 3.9 g/d of vegetable oil stanol esters (2.16 g/d of free plant stanols) on blood total cholesterol, but not LDL cholesterol. Dietary supplementation with 3 g of plant stanols per day (equivalent to 5.1 g/d of plant stanol esters) to hypercholesterolemic subjects consuming a low saturated fat and low cholesterol diet (Ref. 97) did not significantly lower plasma total or LDL cholesterol.

In 10 of 10 studies of hypercholesterolemic subjects consuming ''usual'' diets (Refs. 58, 63 and 64 (1 study), 67, 74, 78, 81 and 82 (1 study), 88 through 90, and 94), plant stanol ester intake was associated with statistically significant decreases in blood total and/or LDL cholesterol levels. In seven (Refs. 58, 67, 74, 88 through 90, and 94) of these ten studies, HDL cholesterol levels were not significantly affected by plant stanol dietary treatment. In 2 studies (Refs. 63 and 64 (1 study) and 78) of the 10 studies, plant stanol esters were reported to increase the levels of HDL cholesterol from baseline levels. Two separate published reports of another study (Refs. 81 and 82) were inconsistent in their description of effects on HDL cholesterol. One publication (Ref. 81) reported HDL cholesterol to be significantly lower in the plant stanol ester group compared to a control group, but the other publication reported that the difference in HDL cholesterol between the two groups was not significant (Ref. 82). This incongruity may be due to the difference in the number of control subjects utilized in the analysis between the two publications. The agency notes that the majority of studies do not report a statistically significant change in HDL cholesterol in the plant stanol ester groups compared to the control groups.

Levels of plant stanol esters found to be effective in lowering total and/or LDL cholesterol levels in hypercholesterolemic subjects consuming a ''usual'' diet ranged from 1.36 to 5.8 g/d (equivalent to 0.8 to 3.4 g/d of free plant stanols) (Refs. 58, 63 and 64 (1 study), 67, 74, 78, 81 and 82 (1 study), 88 through 90, and 94). In the study by Hallikainen et al. (Ref. 88), 1.4 g/d plant stanol ester (0.8 g/d of free plant stanol) did not significantly reduce serum cholesterol levels, but intakes of 2.7, 4.1, and 5.4 g/d of plant stanol esters (1.6, 2.4, and 3.2 g/d of free plant stanols, respectively) were found to significantly reduce both serum total and LDL cholesterol levels. In another of the 10 studies described above (Ref. 94), subjects consuming a higher dose (3.4 g/d, equivalent to 2 g/d of free plant stanols) of plant stanol esters showed statistically significant reductions in both blood total and LDL cholesterol, but a lower dose of plant stanol esters (1.36 g/d, equivalent to 0.8 g/d of free plant stanols) showed reductions in blood total, but not in LDL cholesterol. The results of the study by Miettinen and Vanhanen (Refs. 63 and 64) are inconclusive. This may be due to lack of statistical power (e.g., sample size too small to detect the hypothesized difference between groups) or too low a dose of plant stanols to provide an effect. As previously discussed, the descriptions of methods and results also were inconsistent and difficult to interpret. Although these investigators reported (Ref. 63) a statistically significant effect of 1.36 g/d plant stanol esters (equivalent to 0.8 g/d of free plant stanols) on reducing serum total and LDL cholesterol compared to a control group, there was no effect of 700 mg/d of the free plant stanols (equivalent to 1.19 g/d of plant stanol esters) on blood cholesterol levels.

Two studies (Refs. 91 and 92) examined the effects of plant stanol esters in healthy adults with normal cholesterol levels consuming a ''usual'' diet. Both of these studies demonstrated significant decreases in blood total and LDL cholesterol or non-HDL cholesterol levels when compared to controls. Levels of plant stanol esters found to be effective were 6.8 g/d (vegetable oil stanol esters; 3.8 g/d of free plant stanols) (Ref. 92), 6.8 g/d (pine wood stanol esters; 4 g/d of free plant stanols) (Ref. 92), and 5.1 g/d (source unreported; approximately 3 g/d of free plant stanols) (Ref. 91). HDL cholesterol levels were not significantly affected by plant stanol consumption in these reports.

Based on these studies, FDA finds there is scientific evidence for a consistent, clinically significant effect of plant stanol esters on blood total and LDL cholesterol. The cholesterol-lowering effect of plant stanol esters is consistent in both mildly and moderately hypercholesterolemic populations and in populations with normal cholesterol concentrations. The cholesterol-lowering effect of plant stanol esters has been reported in addition to the effects of a low saturated fat and low cholesterol diet. Most studies also report that plant stanols do not affect HDL cholesterol levels. These conclusions are drawn from the review of the well controlled clinical studies and are supported by the research synthesis study of Law (Ref. 100) and the community intervention trial of Puska et al. (Ref. 102).

IV. Decision to Authorize a Health Claim Relating Plant Sterol/Stanol Esters to Reduction in Risk of CHD

A. Relationship Between Plant Sterol Esters and CHD

The plant sterol esters petition provided information on pertinent human studies that evaluated the effects on serum total cholesterol and LDL cholesterol levels from dietary intervention with plant sterols or plant sterol esters in subjects with normal to mildly or moderately elevated serum cholesterol levels. FDA reviewed the information in the petition as well as other pertinent studies identified by the agency's literature search.

FDA concludes that, based on the totality of publicly available scientific evidence, there is significant scientific agreement to support a relationship between consumption of plant sterol esters and the risk of CHD. The evidence that plant sterol esters affect the risk of CHD is provided by studies that measured the effect of plant sterol ester consumption on the two major risk factors for CHD, serum total and LDL cholesterol.

In most intervention trials in subjects with mildly to moderately elevated cholesterol levels (total cholesterol <300 mg/dL), plant sterol esters were found to

reduce blood total and/or LDL cholesterol levels to a significant degree (Refs. 57, 58, 61 and 62 (1 study), 67, and 74). Moreover, HDL cholesterol levels were unchanged (Refs. 57, 58, 61 and 62 (1 study), 67, and 74). Results in normocholesterolemic subjects (Refs. 51, 65, and 75) were similar to the results in mildly to moderately hypercholesterolemic subjects.

Most of the studies in subjects with mildly to moderately elevated cholesterol levels used ''usual'' diets in either a controlled feeding (Refs. 58 and 74) or free-living (Refs. 57, 63 and 64 (1 study), and 67) situation, but one study used a low saturated fat, low cholesterol diet during the study (Refs. 61 and 62 (1 study)). All three of the studies in subjects with normal blood cholesterol levels used ''usual'' diets in either a controlled feeding (Refs. 51 and 65) or free-living (Ref. 75) situation. Plant sterol esters have been reported to lower blood cholesterol levels in subjects with mildly to moderately elevated cholesterol consuming either a ''usual'' diet or low saturated fat, low cholesterol diet and in subjects with normal blood cholesterol levels consuming ''usual'' diets. Therefore, the evidence suggests that the blood cholesterol-lowering response occurs regardless of the type of background diet subjects consume.

Plant sterols (esterified or free) were tested in either a spread, margarine, or butter carrier and produced fairly consistent results regardless of the food carrier and apparent differences in processing techniques. Given the variability of amounts and of food carriers in which plant sterols and plant sterol esters were provided in the diets studied, the response of blood cholesterol levels to plant sterols appears to be consistent and substantial, except for plant sterols from sheanut oil and ricebran oil (Refs. 67 and 75).

Based on the totality of the publicly available scientific evidence, the agency concludes that there is significant scientific agreement that plant sterol esters from certain sources will help reduce serum cholesterol and that such reductions may reduce the risk of CHD. Section 101.83(c)(2)(ii)(A)(*1*) (discussed in section V.C of this document) specifies the plant sterol esters that have been demonstrated to have a relationship to the risk of CHD. In the majority of clinical studies evaluating plant sterols or plant sterol esters, blood total and LDL cholesterol were the lipid fractions shown to be the most affected by plant sterol intervention. As discussed in section I of this document, reviews by Federal agencies and other scientific bodies have concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total cholesterol and LDL cholesterol represent major contributors to CHD and that dietary factors that decrease blood total cholesterol and LDL cholesterol will affect the risk of CHD (56 FR 60727 at 60728, and Refs. 18 through 21).

Given all of this evidence, the agency is authorizing a health claim on the relationship between plant sterol esters and reduced risk of CHD.

B. Relationship Between Plant Stanol Esters and CHD

The plant stanol esters petition provided information on pertinent human studies that evaluated the effects on serum total cholesterol and LDL cholesterol levels from dietary intervention with plant stanols or plant stanol esters in subjects with normal to mildly or moderately elevated serum cholesterol levels. FDA reviewed the information in the plant stanol esters petition as well as other pertinent studies from the plant sterol esters petition and from the studies identified by the agency's literature search.

FDA concludes that, based on the totality of publicly available scientific evidence, there is significant scientific agreement to support a relationship between consumption of plant stanol esters and the risk of CHD. The evidence that plant stanol esters affect the risk of CHD is provided by studies that measured the effect of plant stanol ester consumption on the two major risk factors for CHD, serum total and LDL cholesterol.

In most intervention trials in subjects with mildly to moderately elevated cholesterol levels (total cholesterol <300 mg/dL), plant stanol esters were found to reduce blood total and/or LDL cholesterol levels to a significant degree (Refs. 58, 63 and 64 (1 study), 67, 74, 77, 78, 80, 81 and 82 (1 study), 88 through 90, and 94). Moreover, HDL cholesterol levels were unchanged in most intervention studies (Refs. 58, 67, 74, 77, 80, 88 through 90, and 94). Results in normocholesterolemic subjects (Refs. 91 and 92) were similar to the results in mildly to moderately hypercholesterolemic subjects.

Most of the studies in subjects with mildly to moderately elevated cholesterol levels used ''usual'' diets in either a controlled feeding (Refs. 58 and 74) or free-living (Refs. 63 and 64 (1 study), 67, 78, 81 and 82 (1 study), 88 through 90, and 94) situation, but three studies used a low saturated fat, low cholesterol diet during the study (Refs. 77, 80 and 97). Both of the studies in subjects with normal blood cholesterol levels (Refs. 91 and 92) used ''usual'' diets in a free-living situation. Plant stanol esters have been reported to lower blood cholesterol levels in subjects with mildly to moderately elevated cholesterol consuming either a ''usual'' diet or low saturated fat, low cholesterol diet and in subjects with normal blood cholesterol levels consuming ''usual'' diets. Therefore, the evidence suggests that the blood cholesterol-lowering response occurs regardless of the type of background diet subjects consume.

Plant stanol esters were tested in either a spread, margarine, butter, mayonnaise or shortening carrier and produced fairly consistent results regardless of the food carrier and apparent differences in processing techniques. Given the variability of amounts and food carriers in which plant stanol esters were provided in the diets studied, the response of blood cholesterol levels appears to be consistent and substantial.

Based on the totality of the publicly available scientific evidence, the agency concludes that there is significant scientific agreement that plant stanol esters will help reduce blood cholesterol and that such reductions may reduce the risk of CHD. Section 101.83(c)(2)(ii)(B)(*1*) (discussed in section V.C of this document) specifies the plant stanol esters that have been demonstrated to have a relationship to the risk of CHD. In the majority of clinical studies evaluating plant stanol esters, blood total and LDL cholesterol were the lipid fractions shown to be the most affected by plant stanol intervention. As discussed in section I of this document, reviews by Federal agencies and other scientific bodies have concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total cholesterol and LDL cholesterol represent major contributors to CHD and that dietary factors that decrease blood total cholesterol and LDL cholesterol will affect the risk of CHD (56 FR 60727 at 60728, and Refs. 18 through 21).

Given all of this evidence, the agency is authorizing a health claim on the relationship between plant stanol esters and reduced risk of CHD.

V. Description and Rationale for Components of Health Claim

A. Relationship Between Plant Sterol/Stanol Esters and CHD and the Significance of the Relationship

New section 101.83(a) describes the relationship between diets containing plant sterol/stanol esters and the risk of CHD. In §101.83(a)(1), the agency recounts that CHD is the most common and serious form of CVD, and that CHD

refers to diseases of the heart muscle and supporting blood vessels. This paragraph also notes that high blood total and LDL cholesterol levels are associated with increased risk of developing CHD and identifies the levels of total cholesterol and LDL cholesterol that would put an individual at high risk of developing CHD, as well as those blood cholesterol levels that are associated with borderline high risk. This information will assist consumers in understanding the seriousness of CHD.

In §101.83(a)(2), the agency recounts that populations with a low incidence of CHD tend to have low blood total and LDL cholesterol levels. This paragraph states that these populations also tend to have dietary patterns that are low in total fat, saturated fat, and cholesterol, and high in plant foods that contain fiber and other components. This information is consistent with that provided in the regulations authorizing health claims for fiber-containing fruits, vegetables, and grain products and CHD (§101.77), soluble fiber from certain foods and CHD (§101.81), and soy protein and CHD (§101.82). The agency believes that this information provides a basis for a better understanding of the numerous factors that contribute to the risk of CHD, including the relationship of plant sterol/stanol esters and diets low in saturated fat and cholesterol to the risk of CHD.

Section 101.83(a)(3) states that diets that include plant sterol/stanol esters may reduce the risk of CHD.

Section 101.83(b) describes the significance of the diet-disease relationship. In §101.83(b)(1), the agency recounts that CHD remains a major public health concern in the United States because the disease accounts for more deaths than any other disease or group of diseases. The regulation states that early management of modifiable CHD risk factors, such as high blood total and LDL cholesterol levels, is a major public health goal that can assist in reducing the risk of CHD. This information is consistent with the evidence that lowering blood total and LDL cholesterol levels reduces the risk of CHD (56 FR 60727, 58 FR 2739, and Refs. 18 through 21 and 50). Section 101.83(b)(2) states that including plant sterol/stanol esters in the diet helps to lower blood total and LDL cholesterol levels. FDA concludes that this statement is scientifically valid based on the evidence that it has reviewed on this diet-disease relationship.

B. Nature of the Claim

In new §101.83(c)(1), FDA is providing that the general requirements for health claims in §101.14 must be met, except that the disqualifying level for total fat per 50 g in §101.14(a)(4) does not apply to spreads and dressings for salad, and the minimum nutrient contribution requirement in §101.14(e)(6) does not apply to dressings for salad. FDA has decided to except these plant sterol/stanol ester products from the specified requirements in §101.14(a)(4) and (e)(6) because it has determined that permitting the health claim on such products will help consumers develop a dietary approach that will result in significantly lower blood cholesterol levels and an accompanying reduction in the risk of heart disease. The basis for this decision is discussed in more detail in section V.D of this document. The agency is requesting comments on this decision.

In §101.83(c)(2)(i), FDA is authorizing a health claim on the relationship between diets that contain plant sterol/stanol esters and the risk of CHD. The agency is authorizing this health claim based on its review of the scientific evidence on this substance-disease relationship, which shows that diets that contain plant sterol/stanol esters help to reduce total and LDL cholesterol (Refs. 51, 57, 58, 61 and 62 (1 study), 63 and 64 (1 study), 65, 67, 74, 75, 77, 78, 80, 81 and 82 (1 study), 88 through 92, and 94). This result is significant for the risk of heart disease because elevated levels of total and LDL cholesterol are associated with increased risk of CHD (Refs. 18 through 21).

In §101.83(c)(2)(i)(A), FDA is requiring, consistent with other health claims to reduce the risk of CHD, that the claim state that plant sterol/stanol esters should be consumed as part of a diet low in saturated fat and cholesterol. The agency acknowledges that most of the scientific evidence for an effect of plant sterol/stanol esters on blood cholesterol levels was provided by studies that used ''usual'' diets (Refs. 51, 57, 58, 63 and 64 (1 study), 65, 67, 74, 75, 78, 81 and 82 (1 study), 88 through 92, and 94). Some studies used low fat, low cholesterol diets and also found a cholesterol-lowering effect of plant sterol/stanol esters (Refs. 61 and 62 (1 study), 77, and 80). The results were consistent across studies, regardless of the background diet used. However, not all studies reported whether reductions in cholesterol were achieved as compared to baseline. The results of one study that investigated the effects of plant stanol esters added to butter (Ref. 78) suggest that plant stanol esters may not be able to fully counteract the impact of a high saturated fat diet on blood cholesterol levels. In that study, plant stanol esters added to butter significantly reduced both serum total cholesterol and LDL cholesterol compared to control (butter alone), but there was no significant reduction in either serum total or LDL cholesterol compared to baseline. Since there must be a cholesterol reduction compared to baseline in order for risk of CHD to decrease, it would be misleading for the claim to imply that plant sterol/stanol esters affect the risk of CHD regardless of diet, when that may not be the case.

In addition, as more fully discussed in section V.A of this document, CHD is a major public health concern in the United States, and the totality of the scientific evidence provides strong and consistent support that diets high in saturated fat and cholesterol are associated with elevated levels of blood total and LDL cholesterol and, thus, CHD (56 FR 60727 at 60737). The majority of Americans consume amounts of total fat and saturated fat that exceed the recommendations made in the Dietary Guidelines for Americans (Ref. 103). For example, from 1994 to 1996 only about one-third of Americans age 2 and older consumed no more than 30 percent of calories from total fat and only about one-third consumed less than 10 percent calories from saturated fat (Ref. 104). Dietary guidelines from both government and private scientific bodies conclude that the majority of the American population would benefit from decreased consumption of dietary saturated fat and cholesterol (Refs. 18 through 21). Thus, the agency finds that it will be more helpful to Americans' efforts to maintain healthy dietary practices if claims about the effect of plant sterol/stanol esters on the risk of CHD also recommend a diet low in saturated fat and cholesterol.

Moreover, the agency finds that for the public to understand fully, in the context of the total daily diet, the significance of consumption of plant sterol/stanol esters on the risk of CHD (see section 403(r)(3)(B)(iii) of the act), information about the total diet must be included as part of the claim. Therefore, the agency believes the plant sterol/stanol-containing food product bearing the health claim should provide information on consuming plant sterol/stanol esters in the context of a healthy diet. In fact, as evidenced by the requirement in section 403(r)(3)(B)(iii) of the act that health claims be stated so that the public may understand the significance of the information in the context of ''a total daily diet,'' Congress intended FDA to consider the role of substances in food in a way that will enhance the chances of consumers constructing diets that are balanced and

healthful overall (Ref. 105). Therefore, the agency finds that the health claim that is the subject of this interim rule should be consistent with the Dietary Guidelines for Americans, 2000 (Ref. 103) guideline for fat and saturated fat intake, which states, ''Choose a diet that is low in saturated fat and cholesterol and moderate in total fat.''

In §101.83(c)(2)(i)(B), the agency is requiring, consistent with other health claims, that the relationship be qualified with the terms ''may'' or ''might.'' These terms are used to make clear that not all persons can necessarily expect to benefit from these dietary changes (see 56 FR 60727 at 60740 and 58 FR 2552 at 2573) or to experience the same degree of blood cholesterol reduction. The requirement that the claim use the term ''may'' or ''might'' to relate the ability of plant sterol/stanol esters to reduce the risk of CHD is also intended to reflect the multifactorial nature of the disease.

In §101.83(c)(2)(i)(C), the agency is requiring, consistent with other authorized health claims, that the terms ''coronary heart disease'' or ''heart disease'' be used in specifying the disease. These terms are commonly used in dietary guidance materials, and therefore they should be readily understandable to the consumer (see 56 FR 60727 at 60740 and 58 FR 2552 at 2573).

In §101.83(c)(2)(i)(D), the agency is requiring that the claim specify the substance as ''plant sterol esters'' or ''plant stanol esters,'' except that if the sole source of plant sterols or stanols is vegetable oil, the claim may use the term ''vegetable oil sterol esters'' or ''vegetable oil stanol esters,'' as appropriate.

Section 101.83(c)(2)(i)(E), consistent with other authorized health claims, requires that the claim not attribute any degree of risk reduction of CHD to consumption of diets that contain plant sterol/stanol esters. Also consistent with other authorized claims, §101.83(c)(2)(i)(F) requires that the claim not imply that consumption of diets that contain plant sterol/stanol esters is the only recognized means of reducing CHD risk.

Investigators have estimated the size of the reduction in risk of heart disease produced by a given reduction in blood cholesterol concentration according to age and the time needed to attain the full reduction in risk (Ref. 101), but these data are population estimates and do not reflect individual risk reduction potential. Moreover, population risk reduction estimates from plant sterol/stanol ester consumption cannot be determined because the data do not reveal a consistent level of blood cholesterol reduction for a given plant sterol/stanol ester intake level. Therefore, the plant sterol/stanol ester studies that the agency reviewed do not provide a basis for determining the percent reduction in risk of CHD likely to be realized from consuming plant sterol/stanol esters, and therefore claims of a particular degree of risk reduction would be misleading.

Section 101.83(c)(2)(i)(G) requires that the claim specify the daily dietary intake of plant sterol or stanol esters needed to reduce the risk of CHD and the contribution one serving of the product makes to achieving the specified daily dietary intake. This requirement is consistent with requirements set forth in §§101.81 and 101.82.

Section 101.83(c)(2)(i)(G)(*1*) specifies the daily dietary intake of plant sterol esters needed to reduce the risk of CHD.

In the studies the agency reviewed that show a statistically significant effect of plant sterols on total and LDL cholesterol, the amounts fed ranged from 0.74 to 8.6 g/d of free plant sterols, which is equivalent to approximately 1.2 to 13.8 g/d of plant sterol esters (Refs. 51, 57, 58, 61 and 62 (1 study), 65, 67, and 75). (Without the high outlier of 8.6 g/d of free plant sterol ester consumed in one study (Ref. 51), the range is 0.74 g/d to 3.24 g/d of free plant sterols (Refs. 57, 58, 61 and 62 (1 study), 65, 67, and 75.)) In proposing 1 g/d of free plant sterols (1.6 g/d plant sterol esters) as the daily dietary intake level associated with reduced risk of CHD, the plant sterol ester petitioner asserted (Ref. 1, page 41) that intakes above 1 g/d have consistently been shown to lower blood total and LDL cholesterol, citing the studies by Maki et al. (Refs. 61 and 62 (1 study), Hendriks et al. (Ref. 57), and Weststrate and Meijer (Ref. 67), but that intakes below this level have not. As support for the latter statement, the petitioner cited the reports by Miettinen and Vanhanen (Refs. 63 and 64 (1 study)), which found no statistically significant blood cholesterol reduction from consumption of 0.7 of plant sterols (equivalent to 1.12 g/d of plant sterol esters).

Although the agency agrees with the plant sterol ester petitioner that free plant sterol consumption of greater than 1 g/d (1.6 g/d of plant sterol esters) has consistently been shown to lower total and LDL cholesterol levels (Refs. 51, 57, 58, 61 and 62 (1 study), and 67), the agency reviewed the studies to determine whether there is a lower level at which consumption of plant sterols has consistently shown cholesterol-lowering effects. There were three studies (Refs. 57, 65, and 75) that found a statistically significant reduction in cholesterol with free plant sterol consumption less than 1 g/d. Hendriks et al. (Ref. 57) reported the effects of feeding three different levels of plant sterol esters, including 1.33 g/d (equivalent to 0.83 g/d free plant sterols). At that intake level, blood total cholesterol decreased by 4.9 percent ($p < 0.001$), and LDL cholesterol decreased by 6.7 percent ($p < 0.001$), compared to a control spread. Sierksma et al (Ref. 75) reported that daily consumption of 0.8 g/d of free soybean oil sterols lowered plasma total and LDL cholesterol concentrations by 3.8 percent ($p < 0.05$) and 6 percent ($p < 0.05$), respectively, compared to a control spread. Pelletier et al. (Ref. 65) reported a 10 percent reduction in blood total cholesterol ($p < 0.001$) and a 15 percent reduction in LDL cholesterol ($p < 0.001$), compared to a control group, in subjects consuming 0.74 g/d of soybean sterols (nonesterified) in 50 g/d of butter for 4 weeks.

For the purpose of setting the daily dietary intake level to be used in the plant sterol esters and risk of CHD health claim, the agency is placing greater emphasis on studies that incorporated plant sterol esters into foods that will be permitted to bear the claim. Therefore, the study by Pelletier et al. (Ref. 65), in which 0.74 g/d of free plant sterols were incorporated into butter, rather than a vegetable-based spread, is less relevant in determining a useful daily intake level. (Butter would not be able to bear the claim because it exceeds the disqualifying levels for cholesterol and saturated fat on a 50 gram basis.) The daily intake level utilized in the study by Pelletier et al. (Ref. 65) is also very close to that used in the study by Miettinen and Vanhanen (Refs. 63 and 64 (1 study)) which found that 0.7 g/d of free plant sterols did not result in statistically significant reductions of blood total and LDL cholesterol. For the purpose of setting a daily intake level, FDA therefore focused instead on the intakes consumed in the Sierksma et al. report (Ref. 75), 0.8 g/d of free plant sterols (equivalent to 1.3 g/d of plant sterol esters), and the Hendriks et al. report (Ref. 57), 0.83 g/d of free plant sterols (1.33 g/d of plant sterol esters). These two intake levels are almost identical, and both resulted in statistically significant reductions in blood total and LDL cholesterol. As previously noted, all other studies with higher intakes of plant sterols also resulted in statistically significant reductions of both blood total and LDL cholesterol (Refs. 51, 57,

58, 61 and 62 (1 study), and 67). The agency therefore finds that consumption of at least 0.8 g/d of free plant sterols, or 1.3 g/d of plant sterol esters, has consistently been shown to lower blood total and LDL cholesterol. Accordingly, FDA is providing in §101.83(c)(2)(i)(G)(*1*) that the daily intake of plant sterol esters associated with reduced risk of CHD is 1.3 g or more of plant sterol esters per day. The agency is asking for comments on this determination.

Section 101.83(c)(2)(i)(G)(*2*) specifies the daily dietary intake of plant stanol esters needed to reduce the risk of CHD. In the studies the agency reviewed that show a statistically significant effect of plant stanols on blood total and LDL cholesterol, the amounts fed ranged from 0.8 to 4 g/d of free plant stanols, which is equivalent to approximately 1.36 to 6.8 g/d of plant stanol esters (Refs. 63 and 64 (1 study), 67, 77, 78, 80, 81 and 82 (1 study), 88 through 92, and 94). In proposing 3.4 g/d of plant stanol esters (2 g/d free plant stanols) as the daily dietary intake level associated with reduced risk of CHD, the plant stanol ester petitioner asserted (Ref. 6, page 12) that intakes of at least 3.4 g/d of plant stanol esters have been shown to significantly reduce blood total and LDL cholesterol, citing the studies by Miettinen et al. (Ref. 89) and Nguyen (Ref. 90).

Although the agency agrees with the plant stanol ester petitioner that plant stanol ester consumption of approximately 3.4 g/d has been shown to significantly lower total and LDL cholesterol levels in several studies (Refs. 80, 89, 90, and 94), FDA notes that two other studies (Refs. 77 and 97) with an intake level of plant stanol esters greater than 3.4 g/d did not report significant reductions in blood total and LDL cholesterol levels. The study by Denke (Ref. 97) did not find reductions in either total or LDL cholesterol after consumption of a total daily intake of 3 g/d of free plant stanols (equivalent to 5.1 g/d of plant stanol esters). Unlike most of the other studies that the agency reviewed, however, the Denke study (Ref. 97) was not a randomized, placebo-controlled, double-blind study, but rather a fixed sequence design. One result of this design was that during the plant stanol dietary supplement phase the subjects consumed an additional 12 g of fat that they did not consume in other phases; this makes comparisons between phases difficult, and therefore FDA gives less weight to this study.

In a report by Hallikainen et al. (Ref. 77), total cholesterol, but not LDL cholesterol, was significantly reduced after consumption of 3.9 g/d plant stanol esters from a vegetable oil source; this same study reported statistically significant reductions in both blood total and LDL cholesterol from a daily intake of 3.9 g/d of plant stanol esters from a wood-derived source. After evaluating the relative effectiveness of the vegetable oil and wood-derived plant stanol esters, however, the authors of this study concluded that the cholesterol-lowering effects of plant stanol esters from these two sources did not differ significantly. Pointing out that there were no significant differences in absolute or percentage changes in cholesterol concentrations between the vegetable oil and wood-derived plant stanol ester groups and that the percentage reduction in LDL cholesterol for the vegetable oil stanol esters compared to control was ''almost significant'' ($p = 0.072$) , these authors concluded that both wood-derived stanol esters and vegetable oil stanol esters reduce serum cholesterol concentrations ''with apparently equal efficacy.'' Another study supports this conclusion. Plat et al. (Ref. 92) compared the reductions in blood total and LDL cholesterol in subjects who consumed 6.8 g/d of wood-derived stanol esters with the blood total and LDL cholesterol reductions in subjects who consumed an equal amount of vegetable oil stanol esters. Again, no statistically significant differences were found; in numerical terms, the cholesterol reductions associated with the vegetable oil stanol esters were slightly greater.

In light of the strong evidence (four studies) that 3.4 g/d of plant stanol esters significantly lowers both total and LDL cholesterol, FDA concludes that intakes of 3.4 g/d or more of plant stanol esters can be expected to significantly lower both total and LDL cholesterol. As explained above, the agency is giving less weight to the Denke study (Ref. 97), in which the intake of plant stanols was equivalent to 5.1 g/d of plant stanol esters, than to the four studies at the 3.4 g/d intake (Refs. 80, 89, 90, and 94) because of a weakness in the design of the Denke study. Although the failure of the Hallikainen study (Ref. 77) to show a statistically significant reduction in LDL cholesterol at 3.9 g/d of vegetable oil stanol esters raises a question about whether the source of the plant stanol esters affects the daily intake level necessary to achieve a benefit, it appears that this was an anomalous result, as explained above. Two studies (Refs. 77 and 92) have concluded that plant stanol esters from vegetable oil and plant stanol esters from wood sources have equal effectiveness in lowering both total and LDL cholesterol.

FDA also reviewed the studies to determine whether there is a level lower than 3.4 g/d at which consumption of plant stanol esters has consistently shown cholesterol-lowering effects. The lowest level at which a study found statistically significant reductions in both total and LDL cholesterol was 1.36 g/d of plant stanol esters (Refs. 63 and 64 (1 study)). However, another study at the same level reported a statistically significant reduction in serum total but not LDL cholesterol (Ref. 58). Further, a study by Hallikainen et al. (Ref. 88) at a slightly higher level reported that 1.4 g/d of plant stanol esters did not significantly reduce serum total or LDL cholesterol levels. The same study (Ref. 88) reported that 2.7 g/d of plant stanol ester significantly reduced serum total and LDL cholesterol levels. However, Jones et al. (Ref. 58) found significant LDL cholesterol, but not total cholesterol, reductions with intake of 3.31 g/d plant stanol esters (Ref. 58). Thus, the agency was unable to find an intake level lower than 3.4 g/d that consistently showed cholesterol-lowering effects for both total and LDL cholesterol.

Except as previously noted for the studies by Denke (Ref. 97) and Hallikainen (Ref. 77), all the studies with intakes of 3.4 g/d or more of plant stanol esters resulted in statistically significant reductions of both total and LDL cholesterol levels (Refs. 67, 77, 78, 80, 81 and 82 (1 study), 88 through 92, and 94). The agency agrees with the petitioner that a total daily intake of at least 3.4 g/d of plant stanol esters (equivalent to 2 g/d of free plant stanols) represents an amount that has been shown to be effective in reducing blood cholesterol. Accordingly, FDA is providing in §101.83(c)(2)(i)(G)(*2*) that the daily intake of plant stanol esters associated with reduced risk of CHD is 3.4 g or more of plant stanol esters per day. The agency is asking for comments on this determination.

In §101.83(c)(2)(i)(H), FDA is requiring the claim to state that the daily dietary intake of plant sterol/stanol esters should be consumed in two servings eaten at different times. In the studies showing a statistically significant effect of plant sterols or plant sterol esters on blood total and LDL cholesterol levels, subjects were provided with and instructed to consume the daily intake of plant sterols or plant sterol esters in two (Refs. 51, 57, 61 and 62 (1 study), and 67) or three (Refs. 58 and 74) servings at different times of the day, or subjects were provided with the plant sterol-

containing food and asked to replace from 25 to 50 g of their typical dietary fat intake with an equal amount of the test food over the course of the day's dietary intake, usually during meals (Refs. 63 and 64 (1 study), 65, and 75). The agency concludes that, to be consistent with the conditions of the studies on which the claim is based, the daily intake of plant sterol esters should be consumed in at least two servings eaten at different times during the day with other foods. For the reasons given in section V.D.1.a of this document, FDA is specifying two servings as the target number of servings.

Similarly, in the studies showing a statistically significant effect of plant stanols or plant stanol esters on blood total and LDL cholesterol levels, subjects were provided with and instructed to consume the daily intake of plant stanols or plant stanol esters in two (Ref. 67) or three (Refs. 58, 74, 80, and 88 through 92) servings at different times of the day, or subjects were provided with the plant stanol-containing food and asked to replace from 25 to 50 g of their typical dietary fat intake with an equal amount of the test food over the course of the day's dietary intake, usually during meals (Refs. 63 and 64 (1 study), 77, 78, 81 and 82 (1 study), and 94). The agency concludes that, to be consistent with the conditions of the studies on which the claim is based, the daily intake of plant stanol esters should be consumed in at least two servings eaten at different times during the day with other foods. For the reasons given in section V.D.1.b of this document, FDA is specifying two servings as the target number of servings.

C. Nature of the Substance

Section 101.83(c)(2)(ii)(A)(*1*) specifies the plant sterol esters that have been demonstrated to have a relationship to the risk of CHD. Plant sterols can be classified on structural and biosynthetical grounds into 4-desmethyl sterols, 4-monomethyl sterols, and 4,4-dimethyl sterols. Plant sterols of the 4-desmethyl sterol class are the plant sterols that have demonstrated the blood cholesterol-lowering effect (Refs. 51, 57, 58, 63 and 64 (1 study), 65, 67, and 75). The major 4-desmethyl sterols are beta-sitosterol, campesterol and stigmasterol (Ref. 106).

Most of the studies that the agency reviewed used vegetable oil sterols, particularly those derived from soybean oil, as the source of beta-sitosterol, campesterol, and stigmasterol. These three 4-desmethyl sterols are also the predominant sterols in corn and canola oil. According to the plant sterol ester petitioner, the typical sterol composition of plant sterol esters is as follows: beta-sitosterol contributes from 30 to 65 percent (by weight) of the sterols, campesterol contributes from 10 to 40 percent of the sterols, and stigmasterol contributes from 6 to 30 percent of the sterols, with other sterols making up no more than 9 percent of the total (Ref. 1, appendix E). The composition of the vegetable oils used as sterol sources in most of the studies that demonstrated a cholesterol-lowering effect was similar (Refs. 51, 57, 58, 65, 67, and 75).

Ricebran oil and sheanut oil principally contain the methylated sterols of the 4,4-dimethyl sterol class. Studies investigating the effects of sterols from ricebran oil and sheanut oil on blood cholesterol levels have not found a cholesterol-lowering effect (Refs. 67 and 75). The structure of the 4-desmethyl sterols is more similar to cholesterol than the structure of 4,4-dimethyl sterols. Because of this structural similarity, it has been suggested that the 4-desmethyl sterols may offer more opportunity for competition with cholesterol for incorporation into mixed micelles, one of the putative mechanisms for the blood cholesterol-lowering action of sterols (Ref. 75).

In studies that found a significant effect on blood cholesterol levels and reported the sterol composition of the plant sterol esters tested, the total amount of the major 4-desmethyl sterols (beta-sitosterol, campesterol and stigmasterol) provided to the subjects during the experimental period ranged from 76 to 98 percent (Refs. 51, 57, 58, 65, 67, and 75), with only 1 study at 76 percent (Ref. 65). The rest of the studies clustered toward the high end of the range, between 89 to 98 percent (Refs. 51, 57, 58, 67, and 75). The agency believes there are a number of likely sources of variability in the sterol composition of the plant sterol ester mixtures, including variability in analytical determinations, processing, seasonal changes, and variety of the crop used. FDA does not have data on the extent of variability in sterol composition but has concluded that it is necessary to provide for some such variability. Given the distribution of the sterol composition percentages in the studies that showed significant effects on blood cholesterol levels and the possible variability of plant sterols in the finished product, FDA has decided to require that the combined percentage of beta-sitosterol, campesterol, and stigmasterol in the plant sterol component of plant sterol esters be 80 percent or higher as a condition of eligibility to bear the health claim. The agency requests comments on the variability of the level of beta-sitosterol, campesterol, and stigmasterol in plant sterols, particularly with respect to the variability of these levels in the plant sterol component of plant sterol ester products used in studies that reported significant cholesterol-lowering effects.

The agency is specifying that only edible oils may be used as the source oils for plant sterols. The agency is also specifying that food-grade fatty acids must be used to esterify the plant sterols. Although the agency is not specifying further the type of fatty acid, such as chain length and degree of unsaturation, FDA expects that the fatty acids will primarily be monounsaturated or polyunsaturated fatty acids to avoid increases in saturated fatty acid content of the final food products.

Section 101.83(c)(2)(ii)(A)(*1*) provides that the plant sterol substance that is the subject of the health claim for reduced risk of CHD is plant sterol esters prepared by esterifying a mixture of plant sterols from edible oils with food-grade fatty acids. Consistent with information in the petition and the sterol composition of test substances used in the studies that showed a cholesterol-lowering effect, §101.83(c)(2)(ii)(A)(*1*) further provides that the plant sterol mixture shall contain at least 80 percent beta-sitosterol, campesterol, and stigmasterol (combined weight). The agency is requesting comments on these requirements.

Section 101.83(c)(2)(ii)(A)(*2*) sets out FDA's decision that plant sterol esters, when evaluated for compliance purposes by the agency, will be measured by a method that is based upon a standard triglyceride or cholesterol determination that uses sample saponification followed by hexane extraction and includes an internal standard. The extract is analyzed by gas chromatography. The method, found in appendix F of the plant sterol esters petition (Ref. 1) and titled, ''Determination of the Sterol Content in Margarines, Halvarines, Dressings, Fat Blends and Sterol Fatty Acid Ester Concentrates By Capillary Gas Chromatography,'' developed by Unilever United States, Inc., dated February 1, 2000, describes a gas chromatographic procedure for determination of the total sterol content in margarines, halvarines (low fat spreads), dressings, fats or fat blends and in sterol ester concentrates. The method is designed for total sterol levels of approximately 10 percent in margarines, fat and fat blends, 8 percent

in halvarines, from 3 to 10 percent in dressings, and approximately 60 percent in sterol ester concentrates. An internal standard is added for quantification. The sample is saponified and the unsaponifiable portion is extracted with heptane. The extract is then analyzed by gas chromatography using a nonpolar stationary phase capillary column with beta-cholestanol as an internal standard. The petitioner has submitted data that demonstrate the precision and inter-analyst reproducibility of the method (Ref. 1, appendix F). Specific sterols have been identified based on gas chromatography/mass spectrometry (GC/MS) analysis and comparison of data in the mass spectral library of the National Institute of Standards and Technology (NIST) (Ref. 4). The method has neither been subjected to validation through the Association of Official Analytical Chemist's (AOAC's) collaborative study or peer-verified method validation procedures, nor is it published in the open literature. FDA is requesting comments on the suitability of the plant sterol ester petitioner's method for assuring that foods bearing the health claim contain the qualifying levels of plant sterol esters. In this document, FDA is incorporating the plant sterol ester petitioner's method by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the method may be obtained from the Center for Food Safety and Applied Nutrition's Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy, 200 C St. SW., rm. 2831, Washington, DC 20204, and may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capital St. NW., suite 700, Washington, DC.

Section 101.83(c)(2)(ii)(B)(*1*) specifies the plant stanol esters that have been demonstrated to have a relationship to the risk of CHD. Sitostanol and campestanol, the saturated (at the 5 position) derivatives of beta-sitosterol, campesterol, and stigmasterol, are the plant stanols that have demonstrated the blood cholesterol-lowering effect (Refs. 58, 63 and 64 (1 study), 67, 77, 78, 81 and 82 (1 study), 88 through 92, and 94). Like the sterols from which they derive, sitostanol and campestanol are in the 4-desmethyl sterol class, and as such are similar in structure to cholesterol. Sitostanol is formed by the hydrogenation of beta-sitosterol, and also by the complete hydrogenation of stigmasterol (stigmasterol has two double bonds that are saturated during the hydrogenation process, whereas sitostanol has one double bond that is saturated during the hydrogenation process). Campestanol is formed by the hydrogenation of campesterol.

Most of the studies that the agency reviewed used vegetable oil stanols or wood-derived plant stanols as the source of sitostanol and campestanol. According to the plant stanol ester petitioner, the stanols in plant stanol esters are derived from hydrogenated plant sterol mixtures or extracted from plant sources (Ref. 8, page 18). In studies that found a significant effect on blood cholesterol levels and reported the stanol composition of the plant stanol esters tested, the combined percentage of sitostanol and campestanol ranged from 64 to 100 percent by weight (Refs. 58, 63 and 64 (1 study), 67, 77, 78, 88, 90, and 92), with only one study at 64 percent (Refs. 63 and 64 (1 study). The rest of the studies clustered toward the high end of the range, between 89 and 100 percent (Refs. 58, 67, 77, 78, 88, 90, and 92).

The agency believes there are a number of likely sources of variability in the stanol composition of the plant stanol ester mixtures, including variability in analytical determinations, processing, seasonal changes, and variety of the crop used. FDA does not have data on the extent of variability in stanol composition but has concluded that it is necessary to provide for some such variability. Given the distribution of the stanol composition percentages in the studies that showed significant effects on blood cholesterol levels and the possible variability of plant stanols in the finished product, FDA has decided to require that the combined percentage of sitostanol and campestanol in the plant stanol component of plant stanol esters be 80 percent or higher as a condition of eligibility to bear the health claim. The agency requests comments on the variability of the level of sitostanol and campestanol in plant stanols, particularly with respect to the variability of these levels in the plant stanol component of plant stanol ester products used in studies that reported significant cholesterol-lowering effects.

The agency is specifying the source material for plant stanols, which may be either plant-derived oils or wood. The plant stanol ester petitioner's GRAS determination, and consequently the agency's safe and lawful conclusion in section II.B.3.b.i of this document, apply only to plant stanols derived from edible oils or from byproducts of the kraft paper pulping process (Ref. 46). Therefore, FDA is providing that plant-derived oils used as the source for plant stanols must be edible oils. If wood is used as the source material, the plant stanols must be derived from byproducts of the kraft paper pulping process. The agency is also specifying that food-grade fatty acids must be used to esterify the plant stanols. Although the agency is not specifying further the type of fatty acid, such as chain length and degree of unsaturation, FDA expects that the fatty acids will primarily be monounsaturated or polyunsaturated fatty acids to avoid increases in saturated fatty acid content of the final food products.

Section 101.83(c)(2)(ii)(B)(*1*) provides that the plant stanol substance that is the subject of the health claim for reduced risk of CHD is plant stanol esters prepared by esterifying a mixture of plant stanols derived from edible oils or byproducts of the kraft paper pulping process with food-grade fatty acids. Consistent with the stanol composition of test substances used in the studies that showed a cholesterol-lowering effect, §101.83(c)(2)(ii)(B)(*1*) further provides that the plant stanol mixture shall contain at least 80 percent sitostanol and campestanol (combined weight). The agency is requesting comments on these requirements.

Section 101.83(c)(2)(ii)(B)(*2*) sets out FDA's decision that plant stanol esters, when evaluated for compliance purposes by the agency, will be measured using a standard cholesterol determination that uses sample saponification, followed by heptane extraction, derivatization to trimethylsilyl ethers and analyzed by gas chromatography.

The plant stanol ester petition (Refs. 8, 11, and 14) provided the following four analytical methods developed by McNeil Consumer Healthcare dated February 15, 2000, for use in different food matrices. The method titled ''Determination of Stanols and Sterols in Benecol® [3] Tub Spread'' describes a procedure for determination of stanols and sterols in tub spreads containing 6 to 18 percent stanol esters. The primary analytes are sitostanol, campestanol, sitosterol and campesterol. Samples are saponified directly with alcoholic potassium hydroxide. Stanols and sterols remain in the unsaponified fraction and are extracted with hexane. The extracted stanols and sterols are then derivatized to trimethylsilyl ethers and analyzed by gas chromatography. The internal standard utilized is cholestanol.

[3] Benecol®'' is the plant stanol ester petitioner's brand of plant stanol ester-containing food products.

The method titled ''Determination of Stanols and Sterols in Benecol Snack Bars'' is suitable for the determination of stanols and sterols in snack bars containing 2.5 to 7.5 percent stanol esters. The method titled ''Determination of Stanols and Sterols in Benecol® Dressing'' is suitable for determination of stanols and sterols in dressing for salad containing 3 to 8 percent stanol esters. Both the dressing for salad and snack bar procedures are similar to that described above for Benecol® tub spread.

The method titled ''Determination of Stanols and Sterols in Benecol® Softgels'' describes a procedure for determination of stanols and sterols in softgels (gelatin capsules with liquid center) containing from 464 to 696 nanograms of stanol esters. The primary analytes are sitostanol, campestanol, sitosterol and campesterol. Stanol ester centers are washed from the gelatin shell and directly saponified with alcoholic potassium hydroxide. Stanols and sterols remain in the unsaponified fraction and are extracted with hexane. The extracted stanols and sterols are then derivatized to trimethylsilyl ethers and analyzed by gas chromatography. The internal standard utilized is cholestanol.

The methods described above separate the major plant stanols in food products from their sterol derivatives. The petitioner has submitted data that show that these analytical methods are linear over a specified range, accurate, precise and reproducible (Refs. 8, 11, and 13). Gas chromatography/mass spectrometry studies were used to confirm the identity of the major stanols (Ref. 14). The data obtained from GC/MS studies with the plant stanol ester raw material and with chemical standards were compared with published spectra and confirmed the purity and identity of the major stanols, sitostanol and campestanol. The method has neither been subjected to validation through the AOAC's collaborative study or peer-verified method validation procedures, nor is it published in the open literature. FDA is requesting comments on the suitability of the plant stanol ester petitioner's methods for assuring that foods bearing the health claim contain the qualifying levels of plant stanol esters. In this document, FDA is incorporating the plant stanol ester petitioner's methods by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the methods may be obtained from the Center for Food Safety and Applied Nutrition's Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy, 200 C St. SW., rm. 2831, Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, and at the Office of the Federal Register, 800 North Capital St. NW., suite 700, Washington, DC.

D. Nature of the Food Eligible to Bear the Claim

1. Eligible Types of Foods and Qualifying Level of Plant Sterol/Stanol Esters Per Serving

a. *Plant sterol esters.* Section 101.83(c)(2)(iii)(A)(*1*) provides that the types of foods eligible to bear the plant sterol esters and risk of CHD health claim are spreads and dressings for salad. Section 101.83(c)(2)(iii)(A)(*1*) requires that any food bearing the health claim contain at least 0.65 g of plant sterol esters per reference amount customarily consumed (RACC) (i.e., per standardized serving). See §101.12 for an explanation of how RACC's are determined and a list of RACC's for commonly consumed foods. As discussed in section V.B of this document, the daily dietary intake level of plant sterol esters that has been associated with reduced risk of CHD is approximately 1.3 g or more per day.

The petitioner suggested that the qualifying level for foods to bear a health claim be 1.6 g per RACC, the same as the target daily intake level associated with reduced risk of CHD. The petitioner stated that the RACC's for spreads and dressings for salad, 1 and 2 tablespoons (tbsp), respectively, are similar to the mean daily intakes of spreads and dressings for salad identified in the U.S. Department of Agriculture (USDA) 1994/96 Continuing Surveys of Food Intakes by Individuals (Ref. 1, appendix G), which were 11.4 and 40 g/d, respectively. The petitioner reasoned that the qualifying level per RACC should be the same as the target daily intake level to assure that people who consume only one serving a day of spread or dressings will still be able to obtain the health benefits of the target daily intake level.

Although FDA recognizes that, based on the plant sterol ester petitioner's data, U.S. mean consumption for users of such products is only one serving of spread or dressing for salad a day, the agency is persuaded by the evidence from the studies supporting the claim that the daily amount should be consumed in at least two servings eaten at different times (see discussion of §101.83(c)(2)(i)(H) in section V.B of this document).

The agency has generally made the assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993). Because of the wide variety of types of foods that could contain qualifying levels of soy protein in the soy protein/CHD health claim (§101.82) or soluble fiber in the soluble fiber/CHD health claim (§101.81), the agency concluded that the assumption of four servings/day of such foods was reasonable. Therefore, the daily qualifying level for soluble fiber substances and soy protein foods was based on consumption of four servings/day of such products. In contrast, however, there is not a wide variety of foods that contain plant sterol esters in significant quantities, and therefore the agency believes that it would be difficult for many consumers to eat four servings a day of such foods. The agency also has concluded that a recommendation for four servings of plant sterol ester-containing foods per day would not be an appropriate dietary recommendation because such foods are necessarily fat-based.

FDA believes that a recommendation for plant sterol-containing products to be consumed over two servings per day is reasonable in light of the composition of these products (i.e., their fat content) and the limited number of available products. Therefore, the agency is requiring that a food bearing a health claim for plant sterol esters and risk of CHD contain at least 0.65 g of plant sterol esters per reference amount customarily consumed (1.3 g divided by two servings per day). The agency is requesting comments on this decision.

The plant sterol ester petitioner requested that the claim be permitted for spreads and dressings for salad. The petitioner did not request authorization to use the health claim in the labeling of any other type of conventional food nor in the labeling of dietary supplements. The agency concluded in section II.B.3.a that the petitioner satisfied the requirement of §101.14(b)(3)(ii) to demonstrate that the use of plant sterol esters in spreads and dressings for salad at the levels necessary to justify a claim is safe and lawful. Furthermore, the petitioner submitted analytical methods for measurement of plant sterol esters in spreads and dressings for salad. Therefore, the agency is providing that the foods eligible to bear the health claim are spreads and dressings for salad. If comments on this interim final rule submit supporting data establishing that the use of plant sterol esters in other food products is safe and lawful and provide a validated analytical method that permits accurate determination of the amount of plant

sterol esters in these foods, FDA will consider broadening the categories of foods eligible to bear the claim in the final rule.

b. *Plant stanol esters.* Section 101.83(c)(2)(iii)(A)(*2*) provides that the types of foods eligible to bear the plant stanol esters and risk of CHD health claim are spreads, dressing for salad, snack bars, and dietary supplements in softgel form. Section 101.83(c)(2)(iii)(A)(*2*) requires that any food bearing the health claim contain at least 1.7 g of plant stanol esters per reference amount customarily consumed. As discussed in section V.B of this document, the daily dietary intake level of plant stanol esters that has been associated with reduced risk of CHD is 3.4 g or more per day.

The plant stanol ester petitioner suggested that the qualifying level for foods to bear a health claim be 0.85 g per RACC. The petitioner explained that this level was derived by dividing the target daily intake level of 3.4 g plant stanol esters by four daily servings.

As discussed in section V.B of this document, analysis of the studies supporting the claim has persuaded FDA that the daily intake of plant stanol esters should be consumed in at least two servings eaten at different times. Moreover, as with plant sterol esters (see section V.D.1.a of this document), FDA believes that two servings of plant stanol esters per day is a more appropriate baseline than four. There is not a wide variety of foods that contain plant stanol esters in significant quantities, and therefore it would be difficult for many consumers to eat four servings a day of such foods. The agency also has concluded that a recommendation for four servings of plant sterol ester-containing foods per day would not be an appropriate dietary recommendation because such foods, like foods containing plant sterol esters, are necessarily fat-based.

As with plant sterol esters, the agency believes that a recommendation for the daily intake of plant stanol esters to be consumed over two servings per day is reasonable in light of the composition of products containing plant stanol esters (i.e., their fat content) and the limited number of available products. Therefore, the agency is requiring that a food bearing a health claim for plant stanol esters and risk of CHD contain at least 1.7 g of plant stanol esters per reference amount customarily consumed (3.4 g divided by two servings per day). The agency is requesting comments on this decision.

The plant stanol ester petitioner requested that the claim be authorized for use on conventional foods and dietary supplements. The agency concluded in section II.B.3.b of this document that the petitioner satisfied the requirement of §101.14(b)(3)(ii) to demonstrate that the use of plant stanol esters in conventional foods or dietary supplements at the levels necessary to justify the claim is safe and lawful. The petitioner also submitted analytical methods for measurement of plant stanol esters in spreads, dressings for salad, snack bars, and dietary supplements in softgel (gelatin capsules with liquid center) form; however, the petitioner did not submit an analytical method suitable for measurement of plant stanol esters in other foods. Without such a method, FDA would have no way to verify that foods bearing the health claim contain the qualifying level of plant stanol esters per RACC, and false claims could be made that would mislead consumers. Therefore, the agency concludes that only foods for which a suitable method is available should be authorized to bear the health claim. Accordingly, FDA is providing that the foods eligible to bear the health claim are spreads, dressings for salad, snack bars, and dietary supplements in softgel form. If comments on this interim final rule provide a validated analytical method that permits accurate determination of the amount of plant stanol esters in other foods, FDA will consider broadening the categories of foods eligible to bear the claim in the final rule.

2. Fat Content Requirements

a. *Low fat.* In §101.83(c)(2)(iii)(B), the agency is requiring, consistent with other authorized heart disease health claims, that foods bearing the health claim meet the requirements for ''low saturated fat'' and ''low cholesterol'' (see §101.62(c)(2) and (d)(2) (21 CFR 101.62(c)(2) and (d)(2)). As discussed elsewhere in this document and in the preamble to the final rule on fiber-containing fruits, vegetables, and grain products and CHD (58 FR 2552 at 2573), the scientific evidence linking diets low in saturated fat and cholesterol to reduced risk of CHD is strong. Therefore, FDA has consistently required foods that make claims about reducing the risk of CHD to be low in saturated fat and cholesterol.

With few exceptions, as noted below, FDA has also required that foods bearing the previously authorized CHD health claims meet the requirements for ''low fat'' (see §101.62(b)(2)). In the dietary lipid and CVD proposed rule, FDA proposed that in order for a food to bear the health claim, the food must meet the requirements for a ''low'' claim relative to total fat content (56 FR 60727 at 60739). The agency noted that, while total fat is not directly related to increased risk for CHD, it may have significant indirect effects. The agency mentioned that low fat diets facilitate reductions in the intake of saturated fat and cholesterol to recommended levels. Furthermore, the agency noted that obesity is a major risk factor for CHD, and dietary fats, which have more than twice as many calories per gram as proteins and carbohydrates, are major contributors to total calorie intakes. For many adults, maintenance of desirable body weight is more readily achieved with moderation of intake of total fat. The agency also concluded that this approach would be most consistent with the U.S. Dietary Guidelines, 4th edition (Ref. 107) and other dietary guidance that recommended diets low in saturated fat, total fat, and cholesterol. In the dietary saturated fat and cholesterol and CHD final rule (58 FR 2739 at 2742), FDA required most foods bearing the claim to meet the requirements for ''low fat,'' but allowed for the exception that fish and game meats could instead meet the less demanding requirements for ''extra lean,'' because these foods are appropriately included in a diet low in fat, saturated fat, and cholesterol. The agency also waived the requirement for ''low fat'' on products consisting of or derived from whole soybeans in the soy protein final rule (64 FR 57700 at 57718), as long as those products contained no additional fat not derived from the soybeans. FDA noted that products derived from whole soybeans are useful sources of soy protein that, like fish and game meats that are ''extra lean,'' can be appropriately incorporated in a diet that is low in fat, saturated fat, and cholesterol.

The recently distributed Dietary Guidelines for Americans, 2000 (Ref. 103) modify the previous guideline for total fat intake. The new guideline states, ''Choose a diet that is low in saturated fat and cholesterol and moderate in total fat.'' This new guideline also states, ''Some kinds of fat, especially saturated fats, increase the risk for coronary heart disease by raising the blood cholesterol. In contrast, unsaturated fats (found mainly in vegetable oils) do not increase blood cholesterol.'' This modification in the dietary guidelines, from the recommendation to choose a diet low in total fat in the 4th edition of the U.S. Dietary Guidelines (Ref. 107) to the recommendation to choose a diet moderate in total fat in the Dietary Guidelines for Americans, 2000 (Ref. 103) is based on current scientific

evidence of the role of diet in CHD, which does not support assigning first priority to a diet low in total fat (Ref. 108). The agency's reliance on dietary guidelines in this rulemaking and in previous health claim regulations is based on provisions of the 1990 amendments that direct FDA to issue health claim regulations that take into account the role of the nutrients in food in a way that will enhance the chances of consumers maintaining healthy dietary practices (see section 403(r)(3)(A) and (r)(3)(B) of the act (21 U.S.C. 343(r)(3)(A) and (r)(3)(B)), along with legislative history that mentions the role of health claims in encouraging Americans to eat balanced, healthful diets that meet federal government recommendations (Ref. 105).

The agency finds that not imposing a ''low fat'' requirement is consistent with the emphasis in the new Dietary Guidelines for Americans, 2000 (Ref. 103) on diets moderate in total fat. Inasmuch as fats are currently the only technically feasible carriers of plant sterol/stanol esters, requiring foods bearing the health claim to be ''low fat'' would greatly limit the number of foods that could use this health claim. Such a requirement would lessen the public health benefits of the rule. On the other hand, there are a number of foods, such as spreads and dressings for salad, that can be formulated to contain plant stanol or sterol esters while still qualifying as ''low saturated fat'' and ''low cholesterol.'' Given the strength of the evidence supporting the cholesterol-lowering effects of plant sterol/stanol esters, the agency is requiring that foods bearing this health claim meet the nutrient content requirements in §101.62 for ''low saturated fat'' and ''low cholesterol,'' but not the requirements for ''low fat.''

b. *Disqualifying levels*. The plant sterol ester and plant stanol ester petitioners requested an exception for certain food products from the disqualifying nutrient level for total fat per 50 g of food in the general health claim regulations (§101.14(a)(4)). The plant sterol ester petitioner requested an exception for spreads and dressings for salad, and the plant stanol ester petitioner requested an exception for all foods with small serving sizes (less than or equal to 2 tbsp or 30 g per RACC). Section 403(r)(3)(A)(ii) of the act provides that a health claim may only be made for a food that:

> does not contain, as determined by the Secretary by regulation, any nutrient in an amount which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet, except that the Secretary may by regulation permit such a claim based on a finding that such a claim would assist consumers in maintaining healthy dietary practices and based on a requirement that the label contain a disclosure * * *.

Accordingly, if FDA finds that such a claim will assist consumers in maintaining healthy dietary practices, the agency may issue a regulation permitting the claim, provided that the regulation requires the label of foods that bear the claim to identify the nutrient that exceeds the disqualifying level. The general requirements for health claims, §101.14(a)(4) and (e)(3), implement this provision of the act. Section 101.14(a)(4) defines the disqualifying levels of total fat, saturated fat, cholesterol, and sodium for different types of foods. The disqualifying level for total fat is 13 g per RACC, per labeled serving size, and, for foods with a RACC of 30 g or less or 2 tbsp or less (i.e., foods with a small serving size), per 50 g. All three criteria apply; i.e., if a food with a small serving size contains more than 13 g of total fat per 50 g, it is considered to exceed the disqualifying level for total fat even if it contains less than 13 g of total fat per RACC and per labeled serving size. Section 101.14(e)(3) provides that the nutrient content of foods that bear a health claim must be within the disqualifying levels in §101.14(a)(4), unless: (1) FDA has established alternative disqualifying levels in the regulation authorizing the claim; or (2) FDA has permitted the claim based on a finding that it will assist consumers in maintaining healthy dietary practices, and the label of foods bearing the claim bears the required disclosure statement about the nutrient that exceeds the disqualifying level.

FDA first considered the plant sterol ester petitioner's request for an exception limited to spreads and dressings for salad. As noted above, foods with reference amounts of 30 g or 2 tbsp or less must contain no more than 13 g of total fat per 50 g of food product to avoid disqualification (§101.14(a)(4)). Reference amounts customarily consumed for spreads and dressings for salad are 1 tbsp and 30 g, respectively. Many spreads and dressings for salad contain total fat levels above the 13 g total fat per 50 g food disqualifying level. Spreads and dressings for salad, however, are appropriate vehicles for plant sterol/stanol esters because such substances are soluble in these fat-based foods.

In the proposed rule entitled ''Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims'' (60 FR 66206, December 21, 1995; hereinafter the 1995 proposed rule), the agency proposed four factors as being important to a decision as to whether to grant an exception from a disqualifying level (60 FR 66206 at 66222). The agency applied these four factors in its consideration of whether to grant an exception from the per 50 g disqualifying level of total fat for spreads and dressings for salad.

The first factor is whether the disease that is the subject of the petition is of such public health significance, and the role of the diet so critical, that the use of a disqualifying level is not appropriate. CHD is of the highest public health significance, and the role of the diet is critical to reducing the risk of CHD. The National Heart, Lung and Blood Institute in its report, ''Morbidity and Mortality: 1998 Chartbook on Cardiovascular, Lung and Blood Diseases,'' published in 1998, estimated that the prevalence of CHD in the United States was 12 million (Ref. 109). Furthermore, it was estimated that 2,130,000 hospitalizations and 9,941,000 visits to physicians' offices were the result of CHD in the United States in 1995 (Ref. 109). CHD is the leading cause of premature, permanent disability in the U.S. labor force, accounting for 19 percent of disability allowances by the Social Security Administration. CHD has a significant effect on U.S. health care costs. For 1999, total direct costs related to CHD were estimated at $53.1 billion and indirect costs from lost productivity associated with morbidity (illness and disability) and mortality (premature deaths) at $46.7 billion (Ref. 22). The agency notes that since plant sterol/stanol esters have been shown to significantly reduce blood cholesterol levels, and thereby help reduce the risk of CHD, an exception from the disqualifying level appears appropriate when considering the disease that is the subject of the claim.

The second factor is whether, absent an exception from the disqualifying levels, the availability of foods that qualify for a health claim would be adequate to address the public health concern that is the subject of the health claim. If only a limited number of food products qualify to bear the claim because of the disqualifying levels, the agency would consider providing an exception. Without an exception from the disqualifying level for total fat, all currently marketed spreads and dressings for salad containing plant sterol/stanol esters would be ineligible to bear the health claim, and the number

of foods eligible for this health claim would be limited to such an extent that the public health value of the claim would be undermined. The agency therefore concludes that the second factor also supports granting an exception.

The third factor in the 1995 proposed rule was whether there is ''evidence that the population to which the health claim is targeted is not at risk for the disease or health-related condition associated with the disqualifying nutrient'' (60 FR 66206 at 66222). The agency stated that the current disqualifying nutrients—total fat, saturated fat, cholesterol and sodium—are associated with diseases or health-related conditions that pose risks to the general population, but that there may be some categories of foods that are targeted to specific subpopulations that are not at particular risk for the disease or health-related condition associated with the disqualifying nutrient (toddlers, for example). Because the target population for this health claim is the general population, not a specific subpopulation that is not at risk for CHD, FDA concludes that the third factor does not weigh in favor of granting an exception from the disqualifying levels for total fat.

The final factor is whether there are any other public health reasons for providing for disclosure of the total fat level rather than disqualification. In this regard, the agency notes that the scientific evidence indicates that plant sterol/stanol esters could contribute significantly to reducing the risk of CHD in the United States. As reviewed in section III.C of this document, a number of well controlled randomized trials have found that plant sterol/stanol esters reduce cholesterol levels in amounts that can be easily consumed by the average adult when incorporated into spreads or dressings for salad. The agency has determined that permitting the health claim on plant sterol/stanol ester-containing spreads and dressings for salad will help consumers develop a dietary approach that will result in significantly lower cholesterol levels and an accompanying reduction in the risk of heart disease.

Another public health reason for providing for disclosure of the total fat level rather than disqualification concerns the change in expert opinion on total fat intake, the risk of CHD, and general health. Although diets high in saturated fat and cholesterol are implicated in CHD, current scientific evidence does not indicate that diets high in unsaturated fat are associated with CHD (Refs. 103 and 108). Furthermore, the 2000 Dietary Guidelines Advisory Committee concluded that the scientific evidence on dietary fat and health supports assigning first priority to reducing saturated fat and cholesterol intake, not total fat intake (Ref. 108). In fact, the new guideline for fat intake in the Dietary Guidelines for Americans, 2000 (Ref. 103) states, ''Choose a diet that is low in saturated fat and cholesterol and moderate in total fat.''

Based on the agency's analysis of the four factors identified in the 1995 proposed rule (60 FR 66206 at 66222) and consistent with the new Dietary Guidelines for Americans, 2000 (Ref. 103), the agency has determined that, despite the fact that spreads and dressings for salad that contain plant stanol/sterol esters may also contain a disqualifying level of total fat per 50 g, a health claim for plant sterol/stanol esters on such foods will assist consumers in maintaining healthy dietary practices. Therefore, the agency is providing in §101.83(c)(2)(iii)(C) a limited exception to the per 50 g disqualifying nutrient level for total fat in §101.14(a)(4) for spreads and dressings for salad that contain plant sterol/stanol esters. The agency is requesting comment on this decision. All foods bearing the health claim for plant sterol/stanol esters and risk of CHD must, however, meet the requirements for ''low saturated fat'' and ''low cholesterol'' (see §101.83(c)(2)(iii)(B)). Likewise, all foods bearing the claim must meet the 13 g limit for total fat per RACC and per labeled serving size.

In accordance with §101.14(e)(3), FDA is also providing that spreads and dressings for salad that take advantage of the exception to the disqualifying level must bear a disclosure statement that complies with §101.13(h) (21 CFR 101.13(h)). This statement must identify the disqualifying nutrient and refer the consumer to more information about the nutrient, as follows: ''See nutrition information for fat content.'' This statement must be included on the label of spreads and dressings for salad that bear a health claim for plant sterol/stanol esters and risk of CHD and that contain more than 13 g of total fat per 50 g of product. Requirements for the format and placement of the disclosure statement are found in §101.13(h)(4).

FDA considered the plant stanol ester petitioner's request that the exception to the disqualifying level for total fat per 50 g apply to all foods with small serving sizes. The agency has decided not to grant this request. There is a wide variety of foods that are consumed in small serving sizes, and the agency is not aware of any public health rationale that would justify applying the exception to all possible foods that are consumed in small serving sizes. Nor did the plant stanol ester petitioner provide such a rationale. The petitioner first argued generally that the benefits of cholesterol reduction through consumption of plant stanol esters would outweigh any negative dietary consequences of consuming foods that would not qualify for the health claim absent an exception from the disqualifying level for total fat (Ref. 8, page 25). The petitioner then argued more specifically that foods containing plant stanol esters replace other fat-containing foods in the diet (Ref. 8, page 25): ''Benecol foods are promoted as foods to be used in place of other similar foods. In the case of spreads, for example, Benecol spreads can be used as an alternative to butter, margarine or other spreads and, therefore, will not increase the overall level of fat in the diet while providing the cholesterol-lowering benefits of plant stanol esters.''

This rationale would not apply to all foods with small serving sizes, however, because not all such foods are used in place of other foods. This rationale provided by the petitioner applies to spreads and dressings for salad, but not necessarily to other foods with small serving sizes. FDA also does not agree that the health benefits of plant stanol esters outweigh the negative consequences of consuming high fat foods to such an extent that an unlimited exception to the disqualifying level for total fat should be permitted for all foods with small serving sizes. The agency further concludes that such a broad exception is not necessary because the availability of spreads and dressings for salad that qualify for the health claim will be sufficient so that consumers will be able to eat a sufficient quantity of plant sterol/stanol esters to receive the cholesterol-lowering benefits those substances provide. It is also likely that there are other types of foods that can be formulated to fall within the limits for total fat in §101.14(a)(4).

Despite FDA's reluctance to grant broad exceptions to the disqualifying levels, the agency is willing to consider additional exceptions on a limited, case-by-case basis. Manufacturers of products other than spreads and dressings for salad that exceed the disqualifying level of total fat may submit comments with supporting information or petition the agency for an exception from disqualification in accordance with §101.14(e)(3) if they wish to make the health claim that is the subject of this interim final rule.

3. Minimum Nutrient Contribution Requirement

The plant sterol ester and plant stanol ester petitioners requested an exception for certain food products containing plant sterol/stanol esters from the minimum nutrient contribution requirement in the general health claim regulations (§101.14(e)(6)). The plant sterol ester petitioner requested an exception for dressings for salad, and the plant stanol ester petitioner requested a general exception for all foods. Section 101.14(e)(6) specifies that conventional foods bearing a health claim must contain 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed before any nutrient addition, except as otherwise provided in individual regulations authorizing particular health claims. Dietary supplements are not subject to this requirement. As explained in the 1993 health claims final rule (58 FR 2478), FDA concluded that such a requirement is necessary to ensure that the value of health claims will not be trivialized or compromised by their use on foods of little or no nutritional value (58 FR 2478 at 2521). FDA adopted this requirement in response to Congress' intent that health claims be used to help Americans maintain a balanced and healthful diet (Ref. 105) (58 FR 2478 at 2489 and 2521).

The agency concludes that, with respect to dressings for salad, the minimum nutrient content requirements of §101.14(e)(6), while important, are outweighed by the public health importance of communicating the cholesterol-lowering benefits from consumption of plant sterol/stanol esters. The agency believes that the value of health claims will not be trivialized or compromised by their use on dressings for salad because dressings for salad often are consumed with foods rich in nutrients and fiber. Salads, for example, are usually rich in vegetables that provide important nutrients at significant levels, e.g., tomatoes—vitamins A and C; carrots—vitamin A; spinach—vitamin A and calcium.

In recognition of the usefulness of plant sterol/stanol esters in reducing blood cholesterol and the nutritional value of salad, FDA has determined that there is sufficient public health evidence to support providing an exception from §101.14(e)(6) for plant sterol/stanol ester-containing dressings for salad. However, the agency has decided not to grant the plant stanol ester petitioner's request for a general exception from the minimum nutrient content requirement. The basis for the plant stanol ester petitioner's request for such an exception is that the cholesterol-lowering benefits of plant stanol ester-containing foods do not depend upon the presence of 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber. The agency, however, concludes that this rationale is not sufficient to justify an exception for all possible foods that would require an exception from the minimum nutrient contribution requirement in order to use the health claim. FDA believes that case-by-case consideration of the justification for an exception is necessary to ensure that the goals of the minimum nutrient contribution requirement are not undermined.

Accordingly, in §101.83(c)(2)(iii)(D), the agency is providing that dressings for salad bearing the health claim are excepted from the minimum nutrient requirement of §101.14(e)(6), but that other foods must comply with this requirement to be eligible to bear a health claim about plant sterol/stanol esters and the risk of CHD. The agency is requesting comment on this decision.

Manufacturers of foods that do not meet the minimum nutrient contribution requirement may submit comments with supporting information or petition the agency to request an exception from this requirement if they wish to use the health claim that is the subject of this interim final rule.

E. Optional Information

FDA is providing in §101.83(d)(1) that the claim may state that the development of heart disease depends on many factors and, consistent with other authorized CHD health claims, may list the risk factors for heart disease. The risk factors are those currently listed in §§101.75(d)(1), 101.77(d)(1), 101.81(d)(1), and 101.82(d)(1). The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease.

In §101.83(d)(2), consistent with §§101.75(d)(2), 101.77(d)(2), 101.81(d)(2), and 101.82(d)(2), FDA is providing that the claim may state that the relationship between diets that include plant sterol/stanol esters and reduced risk of heart disease is through the intermediate link of ''blood cholesterol'' or ''blood total cholesterol'' and ''LDL cholesterol.'' The relationship between plant sterol/stanol esters and reduced blood total cholesterol and LDL cholesterol is supported by the scientific evidence summarized in this interim final rule.

In §101.83(d)(3), the agency is providing that, consistent with §§101.75(d)(3), 101.77(d)(3), 101.81(d)(3), and 101.82(d)(3), the claim may include information from §101.83(a) and (b). These paragraphs summarize information about the relationship between diets that include plant sterol/stanol esters and the risk of CHD and about the significance of that relationship. This information helps to convey the seriousness of CHD and the role that a diet that includes plant sterol/stanol esters can play to help reduce the risk of CHD.

In §101.83(d)(4), the agency is providing that the claim may include information on the relationship between saturated fat and cholesterol in the diet and the risk of CHD. This information helps to convey the importance of keeping saturated fat and cholesterol intake low to reduce the risk of CHD.

In §101.83(d)(5), the agency is providing that the claim may state that diets that include plant sterol/stanol esters and are low in saturated fat and cholesterol are part of a dietary pattern that is consistent with current dietary guidelines for Americans.

In §101.83(d)(6), the agency is providing that the claim may state that individuals with elevated blood total and LDL cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment.

In §101.83(d)(7), the agency is providing that the claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or ''Nutrition and Your Health: Dietary Guidelines for Americans, 2000,'' USDA and Department of Health and Human Services (DHHS), Government Printing Office (GPO) (Ref. 103).

The optional information provided in §101.83(d)(4) through (d)(7) is consistent with optional information set forth in §§101.75, 101.77, 101.81, and 101.82. The intent of this information is to help consumers understand the seriousness of CHD in the United States and the role of diets that include plant sterol/stanol esters and are low in saturated fat and cholesterol in reducing the risk of CHD.

F. Model Health Claims

In §101.83(e), FDA is providing model health claims to illustrate the requirements of §101.83. FDA emphasizes that these model health claims are illustrative only. These model claims illustrate the required, and some of the optional, elements of the interim final rule. Because the agency is authorizing a claim about the relationship between plant sterol/stanol esters and CHD, not approving specific claim wording, manufacturers will be free to design their own claim so long as it is consistent with §101.83(c) and (d).

In §101.83(e)(1)(i) and (e)(1)(ii), the model claims illustrate all of the required elements of the health claim for plant sterol esters. The first claim states, ''Foods containing at least 0.65 grams per serving of plant sterol esters, eaten twice a day with meals for a daily total intake of at least 1.3 grams, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of the food] supplies grams of vegetable oil sterol esters.'' The second claim states, ''Diets low in saturated fat and cholesterol that include two servings of foods that provide a daily total of at least 1.3 grams of vegetable oil sterol esters in two meals may reduce the risk of heart disease. A serving of [name of the food] supplies grams of vegetable oil sterol esters.''

In §101.83(e)(2)(i) and (e)(2)(ii), the model claims illustrate all of the required elements of the health claim for plant stanol esters. The first claim states, ''Foods containing at least 1.7 grams per serving of plant stanol esters, eaten twice a day with meals for a total daily intake of at least 3.4 grams, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of the food] supplies grams of plant stanol esters.'' The second claim states, ''Diets low in saturated fat and cholesterol that include two servings of foods that provide a daily total of at least 3.4 grams of vegetable oil stanol esters in two meals may reduce the risk of heart disease. A serving of [name of the food supplies grams of vegetable oil stanol esters.''

The plant stanol ester petitioner proposed three model health claims that included the following statements, respectively: ''5 g of plant stanol esters per day is more effective in reducing cholesterol and may further reduce the risk of heart disease,'' ''5 g plant stanol esters may be more beneficial in reducing the risk of heart disease,'' and ''5 g plant stanol esters per day has been shown to further lower LDL (bad) cholesterol and may further reduce the risk of heart disease.'' The agency reviewed the scientific evidence to determine whether the data supported these statements, starting with four studies (Refs. 88 through 90, and 94) that reported the blood cholesterol-lowering effects from two or more consumption levels of plant stanol esters.

Hallikainen et al. (Ref. 88) conducted a single-blind, crossover study in which 22 hypercholesterolemic subjects consumed margarine containing four different doses of plant stanol esters, including 1.4, 2.7, 4.1, and 5.4 g/d (0.8, 1.6, 2.4, and 3.2 g/d of free plant stanols), for 4 weeks each. These test margarine phases were compared to a control margarine phase, also 4 weeks long. Serum total cholesterol concentration decreased (calculated in reference to control) by 2.8 percent ($p=0.384$), 6.8 percent ($p< 0.001$), 10.3 percent ($p<0.001$) and 11.3 percent ($p< 0.001$) by doses from 1.4 to 5.4 g plant stanol esters. The respective decreases for LDL cholesterol were 1.7 percent ($p=0.892$), 5.6 percent (< 0.05), 9.7 percent ($p<0.001$) and 10.4 percent ($p<0.001$). Although serum total and LDL cholesterol decreases were numerically greater with the 4.1 and 5.4 g doses than with the 2.7 g dose, these differences were not statistically significant ($p=0.054$-0.516).

Nguyen et al. (Ref. 90) examined the blood cholesterol-lowering effects in subjects consuming either a U.S.-reformulated spread containing 5.1 g/d plant stanol esters (3 g/d free plant stanols), a U.S.-reformulated spread containing 3.4 g per d plant stanol esters (2 g/d of free plant stanols), or a U.S.-reformulated spread without plant stanol esters for 8 weeks. Serum total cholesterol ($p < 0.001$) and LDL cholesterol ($p <0.02$) levels were significantly reduced in the 5.1 and 3.4 g/d plant stanol ester groups compared with the placebo group. The U.S. spread containing 5.1 g/d plant stanol esters lowered serum total and LDL cholesterol by 6.4 and 10.1 percent, respectively, when compared to baseline ($p <0.001$). The 3.4 g/d plant stanol ester U.S. spread group showed a 4.1 percent reduction in both serum total and LDL cholesterol levels compared to baselinese 105 ($p < 0.001$). The reduction in the LDL cholesterol level was found to be significantly greater in the 5.1 g/d plant stanol ester group compared to the 3.4 g/d plant stanol ester group ($p < 0.001$). The authors did not report a statistical analysis comparing serum total cholesterol concentrations between the two consumption levels of plant stanol esters.

Miettinen et al. (Ref. 89) instructed 153 mildly hypercholesterolemic subjects to consume 24 g/d of canola oil margarine or the same margarine with added plant stanol esters for a targeted consumption of 5.1 g/d plant stanol esters (3 g/d free plant stanols), without other dietary changes. At the end of 6 months, those consuming plant stanol esters were randomly assigned either to continue the test margarine with a targeted intake of 5.1 g/d plant stanol esters or to switch to a targeted intake of 3.4 g/d plant stanol esters (2 g/d free plant stanols) for an additional 6 months. Based on measured margarine consumption, average plant stanol ester intakes were 4.4 g/d (in the 5.1 g/d target group) and 3.1 g/d (in the 3.4 g/d target group). Significant reductions in serum total and LDL cholesterol were reported after consuming 4.4 or 3.1 g/d of plant stanol esters compared to the control group ($p < 0.01$). Moreover, a statistically significant difference was observed between the 6th and 12th months in the serum total cholesterol ($p= 0.047$) and LDL cholesterol ($p= 0.017$) curves between the 4.4 and 3.1 g/d plant stanol ester groups, representing a greater serum total cholesterol and LDL cholesterol reduction in the 4.4 g/d plant stanol ester group compared to the 3.1 g/d plant stanol ester group. The authors state, however, ''Despite the finding that the decreasing trends between the 6th and 12th months in the total and LDL cholesterol concentrations in the group consuming 2.6 g of sitostanol were slightly different from the increasing trends in the group consuming 1.8 g, for practical purposes the two doses produced similar cholesterol-lowering effects.''

Vanhanen et al. (Ref. 94) reported the hypocholesterolemic effects of 1.36 g/d of plant stanol esters (800 mg/d of free plant stanols) RSO mayonnaise for 9 weeks followed by 6 weeks of consumption of 3.4 g/d of plant stanol esters (2 g/d of free plant stanols) in RSO mayonnaise compared to a group receiving RSO mayonnaise alone. After 9 weeks of consumption of the lower dose (1.36 g/d) plant stanol ester mayonnaise, the changes in serum levels of total and LDL cholesterol were -4.1 percent ($p < 0.05$) and -10.3 percent (not statistically significant), respectively, as compared to the control. Greater reductions in both serum total and LDL cholesterol were observed after consumption of 3.4 g/d of plant stanol esters for an additional 6 weeks ($p < 0.05$). The changes in serum levels of total and LDL cholesterol were -9.3 percent and -15.2 percent,

respectively, for subjects consuming 3.4 g/d of plant stanol esters as compared to control. These investigators commented:

> [T]he reductions in the serum cholesterol level by SaE [sitostanol ester] were dose-dependent, indicating that the low dose, less than 1 g of sitostanol/day, reduced LDL-cholesterol insufficiently (8.5%). Accordingly, the higher dose, about 2 g/d, appears to be large enough for a reasonable (about 15%) lowering of serum LDL cholesterol. Preliminary studies with even higher doses, 3 g/d, does not appear to increase the cholesterol-lowering effect, even though cholesterol absorption efficiency decreases by almost two-thirds in men with non-insulin-dependent diabetes mellitus at least * * *.

In only one (Ref. 90) of the four studies (Refs. 88 through 90, and 94) described above did the investigators report a statistically significant greater reduction in blood total and LDL cholesterol from consumption of 5 g or more of plant stanol ester compared to a lower consumption level of plant stanol ester. Another study (Ref. 88) found no statistically significant difference between the cholesterol-lowering effects of 5.4 g/d plant stanol esters and two lower intake levels (2.7 and 4.1 g/d). The remaining two studies (Refs. 89 and 94) involved maximum intakes of less than 5 g/d, but in both studies the authors expressed the opinion that higher intakes did not appear to increase the cholesterol-lowering effect for practical purposes. In addition to these multiple-dose studies, FDA reviewed six single-dose studies (Refs. 67, 77, 78, 81 and 82 (1 study), 91, and 92) that reported statistically significant blood cholesterol-lowering effects from daily intake levels greater than 3.4 g/d of plant stanol esters. The agency compared these studies to the studies that found statistically significant blood cholesterol-lowering effects at intakes of plant stanol esters at or close to the 3.4 g/d level. Considering all the studies described above that reported the cholesterol-lowering effectiveness of total daily intake levels greater than 3.4 g/d of plant stanol esters (Refs. 67, 77, 78, 81 and 82 (1 study), 88 through 92, and 94), the blood cholesterol-lowering effect for total cholesterol ranged from 7.1 percent from 5.8 g/d of plant stanol esters (Refs. 81 and 82 (1 study)) to 11.3 percent from 5.4 g/d of plant stanol esters (Ref. 88), and for LDL cholesterol the range was from 7.5 percent from 5.8 g/d of plant stanol esters (Refs. 81 and 82 (1 study)) to 15 percent from 4.4 g/d of plant stanol esters (Ref. 89). These cholesterol-lowering results are similar to those observed in studies that utilized a daily total intake at or close to 3.4 g/d of plant stanol esters (Refs. 58, 80, 89, 90, and 94). In these lower daily intake studies, the blood total cholesterol reduction ranged from 9.3 percent (Ref. 94) to 12 percent (Ref. 80) for 3.4 g/d of plant stanol esters. Similarly, for LDL cholesterol the reductions associated with these lower daily intake levels ranged from 6.4 percent for 3.31 g/d of plant stanol esters (Ref. 58) to 15 percent for 3.4 g/d of plant stanol esters (Refs. 80 and 94). Thus, comparison of the blood cholesterol-lowering ranges between the higher and the lower daily intake levels of plant stanol esters suggests that there is no increased benefit from daily intake levels greater than 3.4 g/d.

Furthermore, the results of a research synthesis analysis (Ref. 100) suggest that intakes greater than about 3.4 g/d of plant stanol esters (2 g/d of plant stanol) would not result in further reduction in LDL cholesterol. This analysis found that a continuous dose response exists up to the 3.4 g/d level, but at higher daily intake levels of plant stanol esters, no further reduction in LDL cholesterol was apparent. Another recent analysis of the dose responsiveness to plant stanol esters, using a compilation of data from published studies, indicates a curvilinear dose response for both blood total and LDL cholesterol, with a clear leveling-off at an intake of about 3.74 g/d plant stanol esters (2.2 g/d free plant stanols) (Ref. 110).

The agency therefore concludes that the weight of the evidence does not support the comparative claims requested by the plant stanol esters petitioner and that such claims would be misleading to consumers. Therefore, FDA is not including the petitioner's requested comparative claims in the model health claims in §101.83 and is not authorizing the plant sterol/stanol esters and risk of CHD health claim to include any statements claiming that 5 g per day of plant stanol esters is more effective than 3.4 g per day of plant stanol esters in reducing blood total or LDL cholesterol or in reducing the risk of heart disease.

VI. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 403(r)(7) of the act authorizes FDA (by delegation from the Secretary of Health and Human Services (the Secretary)) to make proposed regulations issued under section 403(r) of the act effective upon publication pending consideration of public comment and publication of a final regulation, if the agency determines that such action is necessary for public health reasons. This authority enables the Secretary to act promptly on petitions that provide information that is necessary to: (1) Enable consumers to develop and maintain healthy dietary practices, (2) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food, or (3) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible. Proposed regulations made effective upon publication under this authority are deemed to be final agency action for purposes of judicial review. The legislative history indicates that such regulations should be issued as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

Both the plant sterol ester petitioner and the plant stanol ester petitioner have submitted requests for the agency to consider making any proposed regulation on the petitioned health claims effective upon publication in an interim final rule (Refs. 6 and 16).

The plant stanol ester petitioner's request states that all three of the criteria in section 403(r)(7)(A) of the act are met:

> As the petition makes clear, regular consumption of plant stanol esters as part of a healthy dietary pattern provides substantial health benefits. The health claim will, for the first time, provide consumers with important health information on the package label regarding the role of plant stanol esters in lowering cholesterol and reducing the risk of heart disease—information which should be made available to consumers at the earliest possible time. The health claim will provide consumers with scientifically sound information on the nutritional and health benefits of foods containing plant stanol ester, and will enable consumers to develop and maintain healthy dietary practices that include the incorporation of plant stanol esters into their diets.

The plant sterol ester petitioner's request also states that all three of the criteria in section 403(r)(7)(A) of the act are met, and its rationale for meeting the criteria is similar to that of the plant stanol ester petitioner. The plant sterol ester petitioner also points out that if firms are required to wait until publication of a final rule to use the petitioned health claim, consumers will likely not read it on labeling until May 2001 or later. The petitioner further states, if FDA permits the claim to be used upon publication of the proposed rule, however, the claim could appear on labeling almost a year earlier, providing a significant period of time during which consumers could

effectively use the information to make healthier dietary choices.

The agency has considered the requests to make any proposed rule for plant sterol/stanol esters and CHD effective upon publication and concurs that the standard in section 403(r)(7)(A) of the act is met. The agency agrees with the plant sterol ester and plant stanol ester petitioners that authorizing the health claim immediately will help consumers develop and maintain healthy dietary practices. As discussed above, FDA has concluded that there is significant scientific agreement that plant sterol/stanol esters reduce blood total and LDL cholesterol levels. The reported reductions in blood total and LDL cholesterol levels are significant and may have a profound impact on population risk of CHD if consumption of plant stanol esters becomes widespread. The agency has determined that issuance of an interim final rule is necessary to enable consumers to be informed promptly and effectively of this important new knowledge regarding the nutritional and health benefits of plant sterol/stanol esters. The agency has also determined that issuance of an interim final rule is necessary to ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this interim final rule by November 22, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

These regulations are effective September 8, 2000. The agency will address comments and confirm or amend the interim rule in a final rule.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is not a significant regulatory action as defined by Executive Order 12866.

The authorization of health claims about the relationship between plant sterol/stanol esters and coronary heart disease leads to costs and benefits only to those food manufacturers who choose to use the claim. This interim final rule would not require that any labels be redesigned or that any products be reformulated. Therefore, this rule will not generate any direct compliance costs. No firm will choose to bear the cost of redesigning labels unless it believes that the claim will lead to increased sales of its product sufficient to justify that cost. The benefit of this rule is to provide new information in the market regarding the relationship between plant sterol/stanol esters and the risk of coronary heart disease. FDA authorization for this health claim will provide consumers with the assurance that this information is truthful, not misleading, and scientifically valid.

B. Small Entity Analysis

FDA has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As previously explained, this interim final rule will not generate any direct compliance costs. Small businesses will incur costs only if they choose to take advantage of the marketing opportunity presented by this interim final rule. No small entity, however, will choose to bear the cost of redesigning labels unless it believes that the claim will lead to increased sales of its product sufficient to justify those costs.

Accordingly, FDA certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' FDA has determined that this interim final rule does not constitute a significant regulatory action under the Unfunded Mandates Reform Act.

IX. Paperwork Reduction Act

FDA concludes that the labeling provisions of this interim final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between plant sterol/stanol esters and coronary heart disease is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

X. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the interim final rule does not contain policies that have federalism implications as defined in the order and consequently, a federalism summary impact statement is not required.

XI. References

The following references have been placed on display in the Dockets

Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lipton, ''Petition for Health Claim—Vegetable Oil Sterol Esters and Coronary Heart Disease,'' Item CP1, Docket 00P–1275, Dockets Management Branch, February 1, 2000.

2. Letter from Daniel R. Dwyer, Kleinfeld, Kaplan and Becker, to Sharon A. Ross, FDA, Item MT1, Docket 00P–1275, Dockets Management Branch, March 31, 2000.

3. Letter from Daniel R. Dwyer, Kleinfeld, Kaplan and Becker, to Sharon A. Ross, FDA, Item MT2, Docket 00P–1275, Dockets Management Branch, May 3, 2000.

4. Letter from Daniel R. Dwyer, Kleinfeld, Kaplan and Becker, to Lynn A. Larsen, FDA, June 30, 2000.

5. Letter from Lynn A. Larsen, FDA, to Nancy Schnell, Lipton, May 11, 2000.

6. Letter from Daniel R. Dwyer, Kleinfeld, Kaplan and Becker, to Lynn A. Larsen, FDA, June 26, 2000.

7. Letter from Nancy L. Schnell, Lipton, to Christine J. Lewis, FDA, August 2, 2000.

8. McNeil Consumer Healthcare, ''Petition for Health Claim—Plant Stanol Esters and Coronary Heart Disease,'' Item CP1, Docket 00P–1276, Dockets Management Branch, February 15, 2000.

9. Letter from G. A. Leveille, McNeil Consumer Healthcare, to Sharon Ross, FDA, Item MM2, Docket 00P–1276, Dockets Management Branch, February 28, 2000.

10. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Sharon Ross, FDA, Item MM3, Docket 00P–1276, Dockets Management Branch, March 21, 2000.

11. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Sharon Ross, FDA, Item MM4, Docket 00P–1276, Dockets Management Branch, April 3, 2000.

12. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Sharon Ross, FDA, Item MM5, Docket 00P–1276, Dockets Management Branch, May 1, 2000.

13. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Sharon A. Ross, FDA, June 23, 2000.

14. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Lynn Larsen, FDA, July 18, 2000.

15. Letter from Lynn A. Larsen, FDA, to Dr. Gilbert A. Leveille, McNeil Consumer Healthcare, May 25, 2000.

16. Letter from Mark A. Sievers, Johnson & Johnson (parent company to McNeil Consumer Healthcare), to Lynn A. Larsen, FDA, June 14, 2000.

17. Letter from Gilbert A. Leveille, McNeil Consumer Healthcare, to Lynn Larsen, FDA, July 17, 2000.

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46. Letter from Alan M. Rulis, FDA, to Vivian A. Chester, and Edward B. Nelson, McNeil Consumer Healthcare, May 17, 1999.

47. Letter from John C. Young, McNeil Consumer Healthcare, to Alan Rulis, FDA, July 21, 1999.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455, 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.83 is added to subpart E to read as follows:

§ 101.83 Health claims: plant sterol/stanol esters and risk of coronary heart disease (CHD).

(a) *Relationship between diets that include plant sterol/stanol esters and the risk of CHD.* (1) Cardiovascular disease means diseases of the heart and circulatory system. Coronary heart disease (CHD) is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL) cholesterol levels are associated with increased risk of developing coronary heart disease. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 millimole per liter (mmol/l)) or above and LDL cholesterol levels of 160 mg/dL (4.13 mmol/l) or above. Borderline high risk blood cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/l) for total cholesterol, and 130 to 159 mg/dL (3.36 to 4.11 mmol/l) of LDL cholesterol.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in plant foods that contain dietary fiber and other components.

(3) Scientific evidence demonstrates that diets that include plant sterol/stanol esters may reduce the risk of CHD.

(b) *Significance of the relationship between diets that include plant sterol/stanol esters and the risk of CHD.* (1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL cholesterol are major modifiable risk factors in the development of CHD.

(2) The scientific evidence establishes that including plant sterol/stanol esters in the diet helps to lower blood total and LDL cholesterol levels.

(c) *Requirements—(1) General.* All requirements set forth in §101.14 shall

be met, except §101.14(a)(4) with respect to the disqualifying level for total fat per 50 grams (g) in dressings for salad and spreads and §101.14(e)(6) with respect to dressings for salad.

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim associating diets that include plant sterol/stanol esters with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that plant sterol/stanol esters should be consumed as part of a diet low in saturated fat and cholesterol;

(B) The claim states that diets that include plant sterol/stanol esters ''may'' or ''might'' reduce the risk of heart disease;

(C) In specifying the disease, the claim uses the following terms: ''heart disease'' or ''coronary heart disease'';

(D) In specifying the substance, the claim uses the term ''plant sterol esters'' or ''plant stanol esters,'' except that if the sole source of the plant sterols or stanols is vegetable oil, the claim may use the term ''vegetable oil sterol esters'' or ''vegetable oil stanol esters'';

(E) The claim does not attribute any degree of risk reduction for CHD to diets that include plant sterol/stanol esters;

(F) The claim does not imply that consumption of diets that include plant sterol/stanol esters is the only recognized means of achieving a reduced risk of CHD; and

(G) The claim specifies the daily dietary intake of plant sterol or stanol esters that is necessary to reduce the risk of CHD and the contribution one serving of the product makes to the specified daily dietary intake level. Daily dietary intake levels of plant sterol and stanol esters that have been associated with reduced risk of are:

(*1*) 1.3 g or more per day of plant sterol esters.

(*2*) 3.4 g or more per day of plant stanol esters.

(H) The claim specifies that the daily dietary intake of plant sterol or stanol esters should be consumed in two servings eaten at different times of the day with other foods.

(ii) *Nature of the substance*—(A) *Plant sterol esters.* (*1*) Plant sterol esters prepared by esterifying a mixture of plant sterols from edible oils with food-grade fatty acids. The plant sterol mixture shall contain at least 80 percent beta-sitosterol, campesterol, and stigmasterol (combined weight).

(*2*) FDA will measure plant sterol esters by the method entitled ''Determination of the Sterol Content in Margarines, Halvarines, Dressings, Fat Blends and Sterol Fatty Acid Ester Concentrates by Capillary Gas Chromatography,'' developed by Unilever United States, Inc., dated February 1, 2000, the method, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, may be obtained from the Center for Food Safety and Applied Nutrition, Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy, 200 C St. SW., rm. 2831, Washington, DC 20204, and may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(B) *Plant stanol esters.* (*1*) Plant stanol esters prepared by esterifying a mixture of plant stanols derived from edible oils or byproducts of the kraft paper pulping process with food-grade fatty acids. The plant stanol mixture shall contain at least 80 percent sitostanol and campestanol (combined weight).

(*2*) FDA will measure plant stanol esters by the following methods developed by McNeil Consumer Heathcare dated February 15, 2000: ''Determination of Stanols and Sterols in Benecol Tub Spread''; ''Determination of Stanols and Sterols in Benecol Dressing''; ''Determination of Stanols and Sterols in Benecol Snack Bars''; or ''Determination of Stanols and Sterols in Benecol Softgels.'' These methods are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Center for Food Safety and Applied Nutrition, Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy, 200 C St., SW., rm. 2831, Washington, DC, 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St., SW., rm. 3321, Washington, DC, and at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(iii) *Nature of the food eligible to bear the claim.* (A) The food product shall contain:

(*1*) At least 0.65 g of plant sterol esters that comply with paragraph (c)(2)(ii)(A)(*1*) of this section per reference amount customarily consumed of the food products eligible to bear the health claim, specifically spreads and dressings for salad, or

(*2*) At least 1.7 g of plant stanol esters that comply with paragraph (c)(2)(ii)(B)(*1*) of this section per reference amount customarily consumed of the food products eligible to bear the health claim, specifically spreads, dressings for salad, snack bars, and dietary supplements in softgel form.

(B) The food shall meet the nutrient content requirements in §101.62 for a ''low saturated fat'' and ''low cholesterol'' food; and

(C) The food must meet the limit for total fat in §101.14(a)(4), except that spreads and dressings for salad are not required to meet the limit for total fat per 50 g if the label of the food bears a disclosure statement that complies with §101.13(h); and

(D) The food must meet the minimum nutrient contribution requirement in §101.14(e)(6) unless it is a dressing for salad.

(d) *Optional information.* (1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease.

(2) The claim may state that the relationship between intake of diets that include plant sterol/stanol esters and reduced risk of heart disease is through the intermediate link of ''blood cholesterol'' or ''blood total and LDL cholesterol.''

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that include plant sterol/stanol esters and the risk of CHD and the significance of the relationship.

(4) The claim may include information from the following paragraph on the relationship between saturated fat and cholesterol in the diet and the risk of CHD: The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total and LDL cholesterol and, thus, with increased risk of CHD. Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 mg or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with

lower blood total and LDL cholesterol levels.

(5) The claim may state that diets that include plant sterol or stanol esters and are low in saturated fat and cholesterol are consistent with ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO).

(6) The claim may state that individuals with elevated blood total and LDL cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment.

(7) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO).

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between diets that include plant sterol or stanol esters and reduced risk of heart disease:

(1) *For plant sterol esters:* (i) Foods containing at least 0.65 g per serving of plant sterol esters, eaten twice a day with meals for a daily total intake of at least 1.3 g, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of the food] supplies grams of vegetable oil sterol esters.

(ii) Diets low in saturated fat and cholesterol that include two servings of foods that provide a daily total of at least 1.3 g of vegetable oil sterol esters in two meals may reduce the risk of heart disease. A serving of [name of the food] supplies grams of vegetable oil sterol esters.

(2) *For plant stanol esters:* (i) Foods containing at least 1.7 g per serving of plant stanol esters, eaten twice a day with meals for a total daily intake of at least 3.4 g, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of the food] supplies grams of plant stanol esters.

(ii) Diets low in saturated fat and cholesterol that include two servings of foods that provide a daily total of at least 3.4 g of vegetable oil stanol esters in two meals may reduce the risk of heart disease. A serving of [name of the food] supplies grams of vegetable oil stanol esters.

Dated: August 30, 2000.

Margaret Dotzel,

Associate Commissioner for Policy.

TABLES 1 AND 2 TO PREAMBLE:

Note: These tables will not appear in the Code of Federal Regulations.

TABLE 1.—PLANT STEROL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)

Study	Design	Population	Vegetable oil sterols: dose/form	Duration	Dietary intakes	Results
Jones PJ, 2000 (Ref. 58)	Randomized double-blind crossover balanced Latin square design.	N=15 (M) hypercholesterolemic subjects; plasma total cholesterol concentrations ranging from 232 mg/dL to 387 mg/dL. *Means at day 0:* (1) Control group 250±9 mg/dL (2) Phytosterol ester group: 247±7 mg/dL (3) Phytostanol ester group 247±7 mg/dL	(1)*Control*; (2) Phytosterol esters *2.94 g/d* (1.84 g/d free); (3) Phytostanol esters 3.13 g/d (1.84 g/d free) —in 23 g of margarine (margarine consumed 3X/d with meals). *Sterol source:* vegetable oil.	Run-in period NR; 21 days duration on each phase: margarine control, phytosterol ester margarine, and phytostanol ester margarine; each phase followed by a 5-week washout.	Subjects consumed a fixed intake North American solid foods diet in a controlled feeding situation; diets formulated to meet Canadian recommended nutrient intakes. *Dietary intake during study:* Total fat (% TE): 35 Saturated fat (% TE): 10 Cholesterol (mg/d): NR	Percent change in cholesterol compared to control at day 21: *Total-C* phytosterol esters: −9.1† phytostanol esters: −5.5 *LDL–C* phytosterol esters: −13.2* phytostanol esters: −6.4* *HDL–C* phytosterol esters: 0 phytostanol esters: 0 †P < 0.005, *P <0.02, relative to control
Maki KC, submitted for publication (Refs. 61 and 62)	Randomized, double-blind, three-arm parallel controlled study.	N= 224 randomized; N= 193 completed study (M/F) (control N= 83; low PSE N= 75; high PSE N= 35) mild to moderate hypercholesterolemics (mean baseline total cholesterol: 240 mg/dL).	(1) *Control*; (2) Low phytosterol esters (PSE) group: *1.76 g/d* (1.1 g/d free); (3) High phytosterol esters group: *3.52 g/d* (2.2 g/d free) —in 14 g/d of reduced fat (40%) spread (two 7 g servings/d, with food). *Sterol source:* soybean oil.	4 week run-in period, followed by 5 week treatment period.	Run-in diet: NCEP Step I diet and a conventional 50% fat spread; background diet: NCEP Step I diet and a reduced-fat (40%) spread. *Dietary intake, end of study:* *Total Fat (% TE)* control: 29.5±0.8 low PSE: 29.1±0.9 high PSE: 28.8±1.4 Saturated Fat (%TE) control: 9.1±0.4 low PSE: 8.6±0.4 high PSE: 9.1±0.6 Cholesterol (mg/d) control: 182±13 low PSE: 203±16 high PSE: 194±19	Percent change in cholesterol at end of 5 weeks, relative to control: *Total-C* low PSE group: −5.2%* high PSE group: −6.6%* *LDL–C* low PSE group: −7.6%* high PSE group: −8.1%* *HDL–C* low PSE group: 0.8% high PSE group: 1.6% *P <0.001

Ayesh R, 1999 (Ref. 51)	Randomized placebo-controlled dietary study.	N=21 (10 M/ 11F) healthy population; inclusion criteria at baseline for total serum cholesterol concentration: 158 to 255 mg/dL (mean 187±25 mg/dL).	(1) *Control*; (2) Phytosterol ester *13.8 g/d* (8.6 g/d free) —in 40 g/d of margarine; consumed with breakfast and dinner under supervision. *Sterol source:* vegetable oil.	Run-in duration: 21 days M and 28 days F; treatment duration: 21 days M and 28 days F.	Controlled diet based on a typical British diet; breakfast and dinner consumed under supervision, but lunch and snacks were provided and consumed unsupervised outside the unit. *Dietary intake during study:* Total fat (% TE): 40% Saturated fat (% TE): NR Cholesterol (mg/day): 460	Percent change in cholesterol at end of 21/28 days, relative to control: *Total-C:* −18%* *LDL–C:* −23%* *HDL–C:* −7% *(P<0.0001)
Hendriks HFJ, 1999 (Ref. 57)	Randomized, double-blind, crossover, balanced incomplete Latin square design; 5 spreads, 4 periods.	N= 100 (42 M/ 58 F), but 80 subjects for each spread (incomplete Latin square design= 5 spreads in four periods); normocholesterolemic and mildly cholesterolemic volunteers; inclusion criteria at baseline for total serum cholesterol concentration: < 290 mg/dL (baseline total cholesterol: mean 197±38 mg/dL, range: 105 to 287 mg/dL).	(1) Butter (*control*); (2) Spread (*control*); (3) Plant sterol ester *1.33 g/d* (0.83 g/d free); (4) Plant sterol ester *2.58 g/d* (1.61 g/d free); (5) Plant sterol ester *5.18 g/d* (3.24 g/d free) —in 25 g/d of spread (or butter); spreads replaced an equivalent amount of the spread(s) habitually used; ½ at lunch, ½ at dinner. *Sterol source:* soybean and other vegetable oil.	No run-in period; each subject consumed 4 spreads for a period of 3.5 weeks each; washout period NR.	Consumption of habitual Dutch diet (self-selected diets on study). *Dietary intake, end of study:* *Total fat (% TE)* control:*33.9±5.6* 1.33 g/d PSE: 32.9±5.2 2.58 g/d PSE: 33.3±5.5 5.18 g/d PSE: 33.9±5.5 *Saturated fat (% TE)* control: 13.5±2.9 1.33 g/d PSE: 13.4±2.5 2.58 g/d PSE: 13.3±2.7 5.18 g/d PSE: 13.5±2.86 *Cholesterol (mg/d)* control: 245±58.5 1.33 g/d PSE: 245±68.6 2.58 g/d PSE: 248±61 5.18 g/d PSE: 261±63	Percent change in cholesterol at end of 3.5 weeks, relative to control spread: *Total-C* 1.33 g/d PSE: −4.9* 2.58 g/d PSE: −5.9* 5.18 g/d PSE: −6.8* *LDL–C* 1.33 g/d PSE: −6.7* 2.58 g/d PSE: −8.5* 5.18 g/d PSE: −9.9* *HDL–C* 1.33 g/d PSE: −0.3 2.58 g/d PSE: −1.3 5.18 g/d PSE: −1.5 *(P < 0.0001)

TABLE 1.—PLANT STEROL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Vegetable oil sterols: dose/form	Duration	Dietary intakes	Results
Jones PJH, 1999 (Ref. 74)	Randomized double-blind placebo-controlled, parallel study.	N=32 (M) hypercholesterolemic subjects (N= 16 control group, N=16 phytosterol group); inclusion criteria serum total cholesterol concentrations between 252 to 387 mg/dL; mean cholesterol at baseline, mg/dL: control group 263.5 ± 50, phytosterol group 260.5 ± 44.5.	(1) *Control*; (2) Sitostanol-containing phytosterols (20% sitostanol, remaining plant sterols are sitosterol, campesterol) *1.7 g/d* —in 30 g/d of margarine consumed during 3 meals; sterols/stanols not esterified. *Sterol source:* tall oil (derived from pine wood).	No run-in period; experimental period: 30 days; 20 days followup after experimental period.	Controlled feeding regimen for all subjects; a 'prudent,' fixed-food North American diet formulated to meet Canadian recommended nutrient intakes. *Dietary intake during study:* Total fat (% TE): 35% Saturated fat (% TE): 11% Cholesterol (mg/d): NR	*Day 30 cholesterol (mg/dL):* *Total-C* control: 236±56 sitostanol-containing phytosterols: 210±36 *LDL–C* control: 176±52 sitostanol-containing phytosterols: 130±36 ($p < 0.05$ relative to control group) *HDL–C* control: 23±7 sitostanol-containing phytosterols: 26±7 *Day 0 to day 30, percent change:* *LDL–C* control: −8.9%, $P < 0.01$ sitostanol-containing phytosterols: −24.4%, $P < 0.001$ sitostanol-containing phytosterols: −15.5%, $P < 0.05$, relative to control

Sierksma A, 1999 (Ref. 75)	Balanced, double-blind crossover design.	N=76, 75, or 74 healthy volunteers (39 M/37 F); baseline plasma total cholesterol levels < 310 mg/dL.	(1) *Control* (Flora spread); (2) Soybean sterols: *0.8 g/d* (non-esterified); (3) Sheanut oil sterols (esterified): *3.3 g/d* —in 25 g /d spread. *Sterol source:* soybean oil or sheanut oil.	Run-in period: 1 week on control spread; experimental period: 3 weeks each experimental period, 9 weeks total; no wash-out period (balanced design with period by group random allocation).	Volunteers maintained normal dietary patterns during study; spreads were meant to replace all or part of the volunteers' habitual spread or butter used for spreading, but not to be used for baking or frying. *Dietary intake during study:* *Total fat (% TE)* control: 38.3 soybean sterols: 38.3 sheanut sterols: 38.4 *Saturated fat (% TE)* control: 13.9 soybean sterols: 13.8 sheanut sterols: 14.3* *Cholesterol (mg/d)* control: 246 soybean sterols: 247 sheanut sterols: 242 *P < 0.05	Cholesterol (mg/dL): mean (95% CI) *Total-C* control: 196 (193, 199) soybean sterols: 188 (186, 191)* sheanut sterols: 194 (191, 197) *LDL–C* control: 122 (119, 124) soybean sterols: 114 (112, 116)* sheanut sterols: 119 (116, 122) *HDL–C* control: 50 (49, 50) soybean sterols: 50 (49, 51) sheanut sterols: 50 (49, 51) P < 0.05, relative to control *Percent change, relative to control:* *Total–C* soybean sterols: −3.8%* *LDL–C* soybean sterols: −6%* *HDL–C: 0* * P < 0.05

TABLE 1.—PLANT STEROL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Vegetable oil sterols: dose/form	Duration	Dietary intakes	Results
Weststrate JA, 1998 (Ref. 67)	Randomized double-blind crossover, balanced incomplete Latin square design with 5 margarines, 4 periods of 3.5 weeks.	N= 95 (100 enrolled= 50 M/ 50 F) but approximately 80 subjects for each margarine (incomplete Latin square design= 5 margarines in four periods); normocholesterolemic and mildly hypercholesterolemic subjects; inclusion criteria at baseline for total plasma cholesterol concentration: < 310 mg/dL (baseline total cholesterol: mean 207±41 mg/dL).	(1) *Control* (Flora spread); (2) Plant stanol esters *4.6 g/d* (2.7 g/d free); (3) Soybean sterol esters *4.8 g/d* (3 g/d free); (4) Ricebran sterols *1.6 g/d* (5) Sheanut sterols *2.9 g/d*; —in 30 g/d of margarine, consumption at lunch and dinner; margarine replaced margarines habitually used. *Sterol source:* soybean, ricebran and sheanut.	Run-in of 5 days; each subject consumed 4 margarines for a period of 3.5 weeks each; wash-out period between experimental periods- NR.	Volunteers were requested to retain their normal dietary pattern. *Dietary intake during study:* *Total fat (% TE)* control: 42 plant stanol esters: 41.8 soybean sterol esters: 41.5 ricebran sterols: 41.4 sheanut sterols: 41.3 *Saturated fat (%TE)* control: 15.9 plant stanol esters: 16.2 soybean sterol esters: 15.3 ricebran sterols: 15.4 sheanut sterols: 16.9 *Cholesterol (mg/d)* control: 233; plant stanol esters: 243 soybean sterol esters: 226 ricebran sterols: 233 sheanut sterols: 227	Percent change in cholesterol at the end of 3.5 weeks, relative to control spread: *Total-C* plant stanol esters: −7.3* soybean sterol esters: −8.3* ricebran sterols: −1.1 sheanut sterols: −0.7 *LDL–C* plant stanol esters: −13* soybean sterol esters: −13* ricebran sterols: −1.5 sheanut sterols: −0.9 *HDL–C* plant stanol esters: 0.1 soybean sterol esters: 0.6 ricebran sterols: −1.3 sheanut sterols: −1.2 *P <0.05
Pelletier X, 1995 (Ref. 65)	Randomized, crossover design (blinding NR).	N= 12 normolipidic healthy men (baseline cholesterol levels NR).	(1) *Group 1:* 4 weeks normal diet followed by 4 weeks plant sterol-enriched diet *0.740 g/d*; (2) *Group 2:* 4 weeks plant sterol-enriched diet *0.740 g/d* followed by 4 weeks normal diet —in 50 g/d of butter; plant sterols are not esterified. *Sterol source:* soybean oil.	1 week run-in period and two experimental periods of 4 weeks each; wash-out period NR.	Subjects on a controlled diet, but diet is a ''normal'' diet. *Dietary intake, during study:* *Total fat (% TE)* Period 1: 36.4±7.1 Period 2: 36.4±6.9 *Saturated fat (% TE)* Control: NR Plant Sterol: NR *Cholesterol (mg/d)* *Control: 436* Plant Sterol: 410	Percent change in cholesterol at end of 4 weeks, plant sterol-enriched butter relative to control butter: *Total-C* −10%* *LDL–C* −15%* *HDL–C* +4.6% P < 0.001

Miettinen, TA, 1994 (Ref. 63) (same as or partial study of Vanhanen HT, 1992 (Ref. 64))	Randomized, placebo-controlled, double-blind study.	N= 31 (22 M/ 9 F) (control N= 8; sitosterol N= 9; sitostanol N= 7; sitostanol ester N= 7); hypercholesterolemic subjects; inclusion criteria at baseline for total serum cholesterol concentration: >232 mg/dL.	(1) Rapeseed oil (RSO) *control*; (2) Sitosterol *0.7 g/d*; (3) Sitostanol *0.7 g/d*; (4) Sitostanol ester *1.36 g/d* (0.8 g/d free) —in 50 g/d of RSO mayonnaise. *Sterol source:* NR.	6 week run-in period; 9 week study period.	No diet changes other than replacing 50 g of typical daily fat by 50 g of RSO mayonnaise. *Dietary intake at end of study for all subjects:* *Total fat (g/d)* 114±9 Saturated fat (% of total fat) 12.4±0.7% Cholesterol (mg/d) 326±28	Change in cholesterol from end of run-in period to end of 9 week study period (mg/dL): *Total-C* RSO control: +4.6±4.3 sitosterol: −7.7±5.0 sitostanol: −0.4±5.4 sitostanol ester: −7.4±3.1† *LDL–C* RSO control: +3.1±4.3 sitosterol: −7.0±4.3 sitostanol: −1.2±4.6 sitostanol ester: −7.7±3.1*† *HDL–C* RSO control: +2.3±1.2 sitosterol: +0.00±1.5 sitostanol: +2.3±1.5 sitostanol ester: +2.3±0.8* *P < 0.05, relative to run-in †P < 0.05, relative to RSO control
Vanhanen HT, 1992 (Ref. 64) (same as or partial study of Miettinen TA, 1994 (Ref. 63))	Placebo-controlled, randomized, double-blind study.	N=24 (M and F) (control group n= 8; sitosterol group n= 9; sitostanol group n=7) hypercholesterolemic individuals (serum cholesterol> 232 mg/dL).	(1) Rapeseed oil *control*; (2) Sitosterol: *0.625 or 0.722 g/d*; (3) Sitostanol:*0.630 g/d* —in 50 g/d of rapeseed oil mayonnaise; plant sterols/stanols are not esterified. *Sterol source:* rapeseed oil.	6 week run-in on rapeseed oil spread; 9 week period.	On average 50 g of visible dietary fat as butter, margarine, milk fat, sausages and cheeses was replaced by the fat spread. *Dietary intake during study:* Total fat: NR Saturated fat: NR Cholesterol: NR	*Percent change in cholesterol at end of 9 week study period, relative to control:* *Total-C* sitosterol group: −7.6 (NS) sitostanol group: −9.7 (NS) *Cholesterol at end of study* (mg/dL): *Total–C* control: 239±10 sitosterol group: 221±13 sitostanol group: 216±9 all NS *LDL–C:* NR *HDL–C:* NR

Table 1. Plant Sterol Esters and CHD–continued

Acronyms and Abbreviations Used in Table

d day
d deciliter
CI confidence interval
F female
g gram
HDL–C serum high density lipoprotein cholesterol level
LDL–C serum low in density lipoprotein cholesterol level
M male
mg miligram
N number
NCEP National Cholesterol Education Program
NR not reported
NS not statistically significant
% percent
P probability of type 1 error
PSE phytosterol ester
TE total energy
Total-C serum total cholesterol level
RSO rapseed oil (or canola oil)
X times

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Hallikainen MA, 2000 (Ref. 88)	Randomized single-blind, crossover design (dose-dependent study).	N= 22 (M/F) hypercholesterolemic subjects; inclusion criteria: serum total cholesterol concentrations ranging from 193.5 to 329 mg/dL (mean at baseline: 266 50 mg/dL).	(1) *Control*; (2) Plant stanol esters *1.4 g/d,* (0.8 g/d free); (3) Plant stanol esters *2.7 g/d* (1.6 g/d free); (4) Plant stanol esters *4.1 g/d* (2.4 g/d free); (5) Plant stanol esters *5.4 g/d* (3.2 g/d free) —in 25 g of margarine taken in two to three portions with meals. *Stanol source:* NR. All subjects followed the same dosage order; the order of dose periods was randomly determined as follows: 2.4, 3.2, 1.6, 0 (control) and 0.8 g/d.	Run-in duration: 1 week period; 5 test periods of 4 weeks each; no washout between periods.	Subjects followed a standardized background diet throughout the study. *Dietary intake during study:* *Total fat (% TE)* control: 34.3±4.9 1.4 g/d: 33.4±4.9 2.7 g/d: 33.4±4.3 4.1 g/d: 32.5±5.4 5.4 g/d: 33.5±4.2 *Saturated fat (% TE)* control: 10.3±2.2 1.4 g/d: 9.4±1.9 2.7 g/d: 9.3±1.3 4.1 g/d: 8.5±2.1 5.4 g/d: 9.3±2.2 *Cholesterol (mg/d)* control: 158 1.4 g/d: 179 2.7 g/d: 155 4.1 g/d: 153 5.4 g/d: 177	*Cholesterol after test (mg/dL):* *Total-C* control: 252±40 1.4 g/d: 245±45 2.7 g/d: 235±38* 4.1 g/d: 225±36* 5.4 g/d: 223±30* *LDL–C* control: 171±37 1.4 g/d: 168±39 2.7 g/d: 161±34† 4.1 g/d: 153±29* 5.4 g/d: 151±27* *HDL–C* control: 58±12 1.4 g/d: 58±12 2.7 g/d: 59±12 4.1 g/d: 58±14 5.4 g/d: 58±12 *Percent change, relative to control:* Total-C 1.4 g/d: −2.8% 2.7 g/d: −6.8% * 4.1 g/d: −10.3% * 5.4 g/d: −11.3% * *LDL–C* 1.4 g/d: −1.7% 2.7 g/d: −5.6%† 4.1 g/d: −9.7% * 5.4 g/d: −10.4% * *†P 20< 0.001 or †P < 0.05 vs control
Jones PJ, 2000 (Ref. 58)	Randomized double-blind crossover balanced Latin square design.	N=15 (M) hypercholesterolemic subjects; plasma total cholesterol concentrations ranging from 232 mg/dL to 387 mg/dL. *Means at day 0:* (1) Control group 250±9 mg/dL (2) Phytosterol ester group: 247±7 mg/dL (3) Phytostanol ester group 247±7 mg/dL	(1)*Control*; (2) Phytosterol esters*2.94 g/d* (1.84 g/d free); (3) Phytostanol esters*3.31 g/d* (1.84 g/d free) —in 23 g of margarine (margarine consumed 3X/d with meals). *Stanol source:* vegetable oil.	Run-in period NR; 21 days duration on each phase: margarine control, phytosterol ester margarine, and phytostanol ester margarine; each phase followed by a 5-week washout.	Subjects consumed a fixed intake North American solid foods diet in a controlled feeding situation; diets formulated to meet Canadian recommended nutrient intakes. *Dietary intake during study:* Total fat (% TE): 35 Saturated fat (% TE): 10 Cholesterol (mg/d): NR	Percent change in cholesterol from control at day 21: *Total-C* phytosterol esters: −9.1‡ phytostanol esters: −5.5 *LDL–C* phytosterol esters: −13.2 * phytostanol esters: −6.4* *HDL–C* phytosterol esters: 0 phytostanol esters: 0 ‡P <0.005, *P <0.02, relative to control

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Plat J, 2000 (Ref. 92)	Randomized double-blind, placebo-controlled study.	N= 112 (41 M/71 F) non-hypercholesterolemic subjects (control N= 42, pine wood stanol esters N= 34, vegetable oil stanol esters N= 36); inclusion criteria: serum total cholesterol concentrations < 252 mg/dL.	(1) *Control*; (2) Pine wood stanol esters *6.8 g/d* (4 g/d free); (3) Vegetable oil stanol esters *6.8 g/d* (3.8 g/d free) —in 20 g of rapeseed oil margarine plus 10 g of rapeseed oil shortening per day. *Stanol source:* pine wood based or vegetable oil.	Run-in duration: 4 weeks; experimental period: 8 weeks.	Subjects consumed usual habitual diet with the exception that 30 g of test margarine and shortening replaced 30 g of daily fat intake. *Dietary intake during study:* *Total fat (% TE)* control: 39.2±4.2 wood stanol esters: 39.6±3.8 vegetable stanol esters: 40.1±4.1 *Saturated fat (% TE)* control: 14.3±2.0 wood stanol esters: 13.5±1.6 vegetable stanol esters: 13.6±2.2 Cholesterol (mg/d) control: 221.5 wood stanol esters: 238.5 vegetable stanol esters: 239.5	*Change in cholesterol from run-in to experimental period (mg/dL):* Total-C control: −1.6±15.5 wood stanol esters: −16.3±15.1* vegetable stanol esters: −16.6±10.8* *LDL–C* control: −2.3±14.3 wood stanol esters: −15.9±13.9* vegetable stanol esters: −16.6±10.1* *HDL–C* control: 0.4±6.2 wood stanol esters: 0.4±5.0 vegetable stanol esters: 0.0±4.3 *Percent change, relative to control:* *Total-C* wood stanol esters: −8.1±7.5%* vegetable stanol esters: −8.6 ±5.1%* *LDL–C* wood stanol esters: −12.8±11.2%* vegetable stanol esters: −14.6 ±8.0%* * P < 0.001 relative to control

Andersson A, 1999 (Ref. 80)	Randomized double-blind study.	N= 61 (28 M/33 F) moderately hypercholesterolemic subjects ((1) test diet+control margarine: N= 21 (2) test diet+test margarine: N= 19 (3) usual diet+test margarine: N= 21); inclusion criteria: serum total cholesterol levels at screening >194 mg/dL; mean serum cholesterol at baseline: 264±44; exclusion criteria: serum cholesterol > 330 mg/dL at screening.	(1) Controlled lipid-lowering diet (test diet) + low fat margarine (*control* margarine); (2) Controlled lipid-lowering diet (test diet) + a low fat *3.4 g/d* stanol ester (2g/d free)-containing margarine (test margarine); (3) Usual diet (control diet)+ a low fat *3.4 g/d* stanol ester (2g/d free)-containing margarine (test margarine) —in 25 g/d (use 3X per day) of low fat (40% fat) margarine made from low erucic acid rapeseed (canola) oil. *Stanol source:* NR.	Run-in period: 4 weeks; experimental period: 8 weeks.	Subjects consumed either usual diet (control diet) or controlled feeding lipid lowering diet (test diet) during study. *Calculated /food analysis nutrient composition of test diet:* Total fat (%TE): 35 Saturated fat (%TE): 8 Cholesterol(mg/d): 171 *Estimated (dietary records) nutrient composition of control diet:* Total fat (%TE): 31.8±4.6 Saturated fat (%TE): 11.9±2.2 Cholesterol (mg/d): 279±104	*Percent change in cholesterol from baseline:* *Total-C* test diet+control margarine: −8* test diet+test margarine: −15* control diet+test margarine: −9* *LDL–C* test diet+control margarine: −12* test diet+test margarine: −19* control diet+test margarine: −12* *HDL–C* test diet+control margarine: −4 test diet+test margarine: −7 † control diet+test margarine: 0 *P < 0.0001; †P <0.0005, relative to baseline *Percent change (P value) for differences between test diet+test margarine relative to test diet+control margarine:* *Total-C:* −12% (P < −0.0035) *LDL–C:* −15% (P < −0.0158) *HDL–C:* 0% (P < 0.1226) *Percent change (P value) for differences between test diet+test margarine relative to usual diet+ test margarine:* Total-C: −4% (P < 0.0059) LDL–C: −6% (P < 0.0034) HDL–C: −6% (P < 0.0–3)

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Gylling H, 1999 (Ref. 78)	Margarine study: randomized double-blind crossover study; after the margarine period the same women were randomized to the Butter study, which is a randomized double-blind crossover study.	N=23 during margarine period, N= 21 during butter period; moderately hypercholesterolemic postmenopausal women; inclusion criteria: serum cholesterol between 213 and 310 mg/dL.	(1) Sitostanol ester margarine *5.4 g/d* (3.18 g/day free) (wood oil); (2) Campestanol ester margarine *5.7 g/d* (3.16 g/d free) (vegetable oil); (3) Butter *control*; (4) Sitostanol ester butter *4.1 g/d* (2.43 g/d free) (wood oil) —in 25 g of margarine or butter. *Stanol source:* wood or vegetable oil.	Run-in period: 1 week; the margarine interventions lasted 6 weeks, the butter interventions lasted 5 weeks; a washout period of 8 weeks separated the margarine and butter studies.	Subjects were advised to replace 25 g of their normal dietary fat with stanol ester margarine or butter with or without stanol esters. *Dietary intake during study:* *Total fat (g/d)* margarine period: 93±6 butter period: 97±6 *Saturated fat* margarine period: NR butter period: NR *Cholesterol (mg/d)* margarine period: 262±19 butter period: 323±19	*Cholesterol at end of period (mg/dL):* *Total-C* run-in home diet: 235±6 sitostanol ester margarine: 224±7* campestanol ester margarine: 221±7* butter control: 245±8* sitostanol ester butter: 228±7 † *LDL–C* run-in home diet: 154±5 sitostanol ester margarine: 140±5* campestanol ester margarine: 139±7* butter control: 161±7 sitostanol ester butter: 143±6† *HDL–C* run-in home diet: 60±3.5 sitostanol ester margarine: 63±4* campestanol ester margarine: 63±3* butter control: 63±4* sitostanol ester butter: 63±4 *Percent change from butter control:* *Total-C* sitostanol ester butter: −8%† *LDL–C* sitostanol ester butter: −12%† *Significantly different from run-in home diet, $P < 0.05$; †Significantly different from butter, $P < 0.05$

Hallikainen MA, 1999 (Ref. 77)	Randomized double-blind, placebo-controlled, parallel study.	N= 55 (M/F); hypercholesterolemic subjects ((1)control margarine N= 6 M, 11 F, (2) wood stanol ester-containing margarine (WSEM) N= 8 M, 10 F, (3) vegetable oil stanol ester-containing margarine (VOSEM) N= 6 M, 14 F); inclusion criteria serum total cholesterol concentrations between 2– to 290 mg/dL; mean cholesterol at baseline, mg/dL: control group 229±25 WSEM group 246±29; VOSEM group 238±31.	(1) *Control margarine*; (2) WSEM *3.9 g/d* (2.31 g/d free); (3) VOSEM *3.9 g/d* (2.16 g/d free) —in 25 g low-erucic acid RSO-based low fat (40% or 35% fat) margarine per day. *Stanol source:* wood or vegetable.	Run-in period: 4 week; experimental period: 8 weeks.	Subjects consumed the margarines as part of a diet resembling that of the National Cholesterol Education Program's Step II diet. *Dietary intake during study:* *Total fat (%TE)* control: 26.5±3.1 WSEM: 26.4±3.3 VOSEM: 25.6±3.9 *Saturated fat (%TE)* control: 7.3±1.6 WSEM: 7.0±1.4 VOSEM: 6.8±1.7 *Cholesterol (mg/day)* control: 135 WSEM: 164 VOSEM: 139	*Change in cholesterol from week 0 to week 8 (mg/dL):* *Total-C* control: −18.6±19 WSEM: −46.8±23.6* VOSEM: −38±22.8† *LDL–C* control: −17.4±22.8 WSEM: −41±17‡ VOSEM: −31±19.4 HDL–C control: 0.4±5.8 WSEM: −1.2±6.6 VOSEM: −1.9±7 *Percent change, relative to control:* *Total-C* WSEM: −10.6%* VOSEM: −8.1%† *LDL–C* WSEM: 13.7%‡ VOSEM: 8.6% Significantly different from control group: *P < 0.001, †P < 0.05, ‡P < 0.01
Jones PJH, 1999 (Ref. 74)	Randomized double-blind placebo-controlled, parallel study.	N=32(M) hypercholesterolemic subjects (N= 16 control group, N=16 phytosterol group); inclusion criteria serum total cholesterol concentrations between 252 to 387 mg/dL; mean cholesterol at baseline, mg/dL: control group 263.5±50, phytosterol group 260.5 ±44.5.	*(1) Control*; (2) Sitostanol-containing phytosterols (20% sitostanol, remaining plant sterols are sitosterol, campesterol) 1.7 g/d —in 30 g/d of margarine consumed during 3 meals; sterols/stanols not esterified. *Sterol source:* tall oil (derived from pine wood)	No run-in period; experimental period: 30 days; 20 days followup after experimental period.	Controlled feeding regimen for all subjects, a 'prudent,' fixed-food North American diet formulated to meet Canadian recommended nutrient intakes *Dietary intake during study:* Total fat (% TE): 35% Saturated fat (% TE): 11% Cholesterol (mg/d): NR	*Day 30 cholesterol (mg/dL):* *Total-C* control: 236±56 sitostanol-containing phytosterols: 210±36 *LDL–C* control: 176±52 sitostanol-containing phytosterols: 130±36 (p < 0.05 relative to control group) *HDL–C* control: 23±7 sitostanol-containing phytosterols: 26±7 *Day 0 to day 30 (% change):* *LDL–C* control: −8.9%, P < 0.01 sitostanol-containing phytosterols: −24.4%, P < 0.001 sitostanol-containing phytosterols: −15.5%, P <0.05, relative to control

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Nguyen TT, 1999 (Ref. 90)	Multicenter, randomized double-blind, placebo-controlled parallel study.	N= 298 (51% M/ 49% F) mildly hypercholesterolemic subjects; ((1) control N= 76, (2) EU 3G N=74, (3) US 3G N= 71, (4) US 2G N= 77); inclusion criteria serum total cholesterol concentrations between 200 to 280 mg/dL; mean baseline total cholesterol: 233±20 mg/dL.	(1) *Control:* US reformulation of vegetable oil spread; (2) EU 3G: *5.1 g/d* stanol esters (3g/d free) European formulation of vegetable oil spread; (3) US 3G: *5.1 g/d* stanol esters (3 g/d free) US reformulation of vegetable oil spread; (4) US 2G: *3.4 g/d* stanol esters (2 g/d free) US reformulation of vegetable oil spread —in 24 g/d spread (three 8 g servings a day). *Stanol source:* wood.	Run-in period: 4 weeks; experimental period: 8 weeks.	Usual dietary habits maintained, but some subjects on a NCEP Step I diet, so background diets varied, but diet composition reported not to differ among the four groups. *Dietary intake during study:* Total fat (% TE): 32.8 (6.8) Saturated fat (% TE): 9.8 (3.0) Cholesterol (mg/d): 234 (147)	*Percent change in cholesterol from baseline to week 8:* *Total-C* control: 0.5* EU 3G: −4.7* US 3G: −6.4* US 2G: −4.1* *LDL–C* control: 0.1* EU 3G: −5.2* US 3G: −10.1* US 2G: −4.1* *HDL–C* control: 2.0 EU 3G: 0.0 US 3G: 0.0 US 2G: 0.0 *P < 0.001, relative to baseline Total-C (P < 0.001) and LDL–C (P <0.02) levels were significantly reduced in all 3 active-ingredient groups compared with the placebo group at all time points during the ingredient phase. (see figures in paper for values)

Weststrate JA, 1998 (Ref. 67)	Randomized double-blind crossover balanced incomplete Latin square design with 5 margarines, 4 periods of 3.5 weeks.	N= 95 (100 enrolled= 50 M/ 50 F) but approximately 80 subjects for each margarine (incomplete Latin square design= 5 margarines in four periods); normocholesterolemic and mildly hypercholesterolemic subjects; inclusion criteria at baseline for total plasma cholesterol concentration: < 310 mg/dL (baseline total cholesterol: mean 207 ±41mg/dL).	(1) *Control* (Flora spread); (2) Plant stanol esters *4.6 g/d* (2.7 g/d free); (3) Soybean sterol esters *4.8 g/d* (3 g/d free); (4) Ricebran sterols *1.6 g/d* free; (5) Sheanut sterols *2.9 g/d* free —in 30 g/d of margarine, consumption at lunch and dinner; margarines replaced margarines habitually used. *Stanol source:* wood.	Run-in of 5 days; each subject consumed 4 margarines for a period of 3.5 weeks each; wash-out period between experimental periods- NR.	Volunteers were requested to retain their normal dietary pattern. *Dietary intake during study:* *Total fat (% TE)* control: 42 plant stanol esters: 41.8 soybean sterol esters: 41.5 ricebran sterols: 41.4 sheanut sterols: 41.3 *Saturated fat (%TE)* control: 15.9 plant stanol esters: 16.2 soybean sterol esters: 15.3 ricebran sterols: 15.4 sheanut sterols: 16.9 *Cholesterol (mg/d)* control: 233 plant stanol esters: 243 soybean sterol esters: 226 ricebran sterols: 233 sheanut sterols: 227	Percent change in cholesterol at end of 3.5 weeks, relative to control: *Total-C* plant stanol esters: −7.3* soybean sterol esters: −8.3* ricebran sterols: −1.1 sheanut sterols: −0.7 *LDL–C* plant stanol esters: −13* soybean sterol esters: −13* ricebran sterols: −1.5 sheanut sterols: −0.9 *HDL–C* plant stanol esters: 0.1 soybean sterol esters: 0.6 ricebran sterols: −1.3 sheanut sterols: −1.2 *P <0.05
Niinikoski H, 1997 (Ref. 91)	Randomized double-blind, placebo-controlled study.	N=24 (M/F) normocholesterolemic subjects (N=12 (4 M/8 F) control, N=12 (4 M/8 F) sitostanol ester); baseline serum total cholesterol: 197±38.7 mg/dL.	*(1) Control*; (2) Sitostanol ester 5.1 g/d (3 g/d free); —in 24 g of a RSO based margarine to be used on bread, in food preparation and in baking in three 8 g portions over the day. *Stanol source:* NR.	No run-in period; experimental period: 5 weeks.	Subjects were advised to replace normal dietary fat for 5 weeks with the study margarine; the amount and quality of ingested fat were planned to be equal in both groups. *Dietary intake during study:* Total fat: NR Saturated fat: NR Cholesterol: NR	*Cholesterol change from baseline to 5 weeks (mg/dL):* Total-C control: −11.6±19.4 sitostanol ester: −31±19.4* *Non-HDL–C* control: −11.6±19.4 sitostanol ester: −31±23* *HDL–C* control: −1.5 ±6.6 sitostanol ester: −2.3±4.6 *P <0.05, relative to control

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Denke MA., 1995 (Ref. 97)	Fixed sequence design with three sequential experimental periods.	N= 33 (M) moderate hypercholesterolemic subjects; total cholesterol concentration after run-in period: 239±29.	(1) *Control* (Step 1 Diet alone); (2) Plant stanol *3 g/d* + Step 1 Diet; (3) *Washout* (Step 1 Diet alone) —plant stanol was suspended in safflower oil and packed into gelatin capsules, each capsule containing 250 mg sitostanol and 1 g of safflower oil; subjects instructed to consume 4 capsules per meal (subjects were to consume a total of 12 capsules (3 g) in three divided doses during three meals); plant stanols not esterified. *Stanol source:* tall oil.	1 month run-in on Step I Diet; experimental periods: 3 months in duration; washout period: 1 month.	Subjects were instructed to follow a cholesterol-lowering diet in which dietary cholesterol was restricted to < 200 mg/d (Step I Diet). *Dietary intake (self-reported intake):* Total fat (%TE): 30 Saturated fatty acids (%TE): 10 Cholesterol (mg/d): 188	Cholesterol, at end of each period (mg/dL): *Total–C* control: 239±29 plant stanol + Step I Diet: 238±31 washout: 244±29 *LDL–C* control: 175±26 plant stanol + Step I Diet: 172±31 washout: 181±30 *HDL–C* control: 39±11 plant stanol + Step I Diet: 41±12 washout: 39±11 *NS* differences between any period.

Miettinen TA, 1995 (Ref. 89)	Randomized double-blind, placebo-controlled study.	N= 153 (42% M/ 58% F) (N= 51 control margarine, N=102 test margarine) mild hypercholesterolemic subjects; inclusion criteria: serum cholesterol concentration ±216 mg/dL.	*(1) Control margarine*; (2) Sitostanol ester *5.1 g/d* (3 g/d free) for 1 year; (3) Sitostanol ester *5.1 g/d* (3 g/d free) for 6 months, followed by sitostanol ester 3.4 g/d (2 g/d free) for next 6 months —in 24 g/d margarine. Actual intake of sitostanol ester for 5.1 g/d: *4.4 g/d* for 3.4 g/d: *3.1 g/d.* *Stanol source:* wood.	Run-in period: 6 weeks; experimental period: 1 year; after 6 months the sitostanol-ester group was randomly reassigned either to continue their intake of 4.4 g/d of sitostanol ester (N= 51) or to reduce their intake to 3.1 g/d (N= 51); subjects were not informed of this change in sitostanol ester intake.	During the study subjects were advised to replace 24 g per day of their normal dietary fat with a margarine containing RSO, according to careful instructions from a qualified nurse, otherwise typical ad libitum diet during study. *Dietary intake during study:* *Total fat (%TE)* control: 34.9±0.9 4.4 g/d stanol ester: 35.7±0.8 3.1g/d stanol ester: 34.8±0.9 *Saturated fat (%TE)* control: 13.9±0.5 4.4 g/d stanol ester: 14.4±0.4 3.1 g/d stanol ester: 14.3±0.7 *Cholesterol (mg/d)* control: 314±27 4.4 g/d stanol ester: 340±37 3.1 g/d stanol ester: 308±20	Cholesterol concentration at 1 year (mg/dL): *Total-C* control: 237±4 4.4 g/d stanol ester: 210±4* 3.1 g/d stanol ester: 214±4* *LDL–C* control: 157±4 4.4 g/d stanol ester: 134±3* 3.1 g/d stanol ester: 138±3* *HDL–C* control: 54±2 4.4 g/d stanol ester: 53±1 3.1 g/d stanol ester: 58±2 *P < 0.001, relative to baseline *Mean change after 1 year (mg/dL):* *Total-C* control: −1 4.4 g/d stanol ester: −25* (difference −24 (95% CI: −17 to −32)) *LDL–C* control: −3 4.4 g/d stanol ester: −24* (difference −21 (95% CI: −14 to −29)) *HDL–C* control: 0.0 4.4 g/d stanol ester: 0.4 *P < 0.001, relative to control

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Miettinen, T A, 1994 (Ref. 63) (same as or partial study of Vanhanen HT, 1992 (Ref. 64))	Randomized placebo-controlled, double-blind study.	N= 31 (22 M/ 9 F) (control N= 8; sitosterol N= 9; sitostanol N= 7; sitostanol ester N= 7); hypercholesterolemic subjects; inclusion criteria at baseline for total serum cholesterol concentration: > 232 mg/dL.	(1) RSO *control*; (2) Sitosterol *0.7 g/d*; (3) Sitostanol *0.7 g/d*; (4) Sitostanol ester *1.36 g/d* (0.8 g/d free) —in 50 g/d of RSO mayonnaise. *Stanol source:* NR.	6 week run-in period; 9 week study period.	No diet changes other than replacing 50 g of typical daily fat by 50 g of RSO mayonnaise. *Dietary intake at end of study for all subjects:* *Total fat (g/d)* 114±9 *Saturated fat* (% of total fat) 12.4±0.7% *Cholesterol* (mg/d) 326±28	Change in cholesterol from end of run-in period to end of 9 week study period (mg/dL): *Total-C* RSO control: 4.6±4.3 sitosterol: −7.7±5.0 sitostanol: −0.4±5.4 sitostanol ester: −7.4±3.1† *LDL–C* RSO control: 3.1±4.3 sitosterol: −7.0±4.3 sitostanol: −1.2±4.6 sitostanol ester: −7.7±3.1*† *HDL–C* RSO control: 2.3±1.2 sitosterol: 0.00±1.5 sitostanol: 2.3±1.5 sitostanol ester: 2.3±0.8* *P < 0.05, relative to run-in †P < 0.05, relative to RSO control

Vanhanen HT, 1994 (Ref. 94)	Randomized double-blind, placebo-controlled study.	N= 15 (11M/ 4 F) mildly hypercholesterolemic subjects (N= 8 control group, N= 7 sitostanol group); serum cholesterol selection criteria > 232 mg/dL.	(1) *Control* (RSO mayonnaise); (2) Sitostanol ester *1.36 g/d* (0.8 g/d free); (3) Sitostanol ester *3.4 g/d* (2 g/d free) —in 50 g/d of RSO mayonnaise. *Stanol source:* NR.	Run-in period: 6 weeks; experimental period: 15 weeks; lower dose sitostanol for 9 weeks, followed by higher dose sitostanol for 6 weeks.	Subjects replaced 50 g of their usual dietary fat by 50 g of RSO mayonnaise, otherwise usual diet. *Dietary intake during run-in period (reported to be similar to the experimental period):* *Total fat (g/d):* control group: 124 sitostanol group: 118 *Saturated fat:* control group: NR sitostanol group: NR *Cholesterol (mg/day):* control group: 321 sitostanol group: 265	*Cholesterol change from baseline (mg/dL):* *Total-C* control: 5±5 1.36 g/d: −7.4±3.1‡ control: 8.1±5.4 3.4 g/d: −11.2 3.5*‡ *LDL–C* control: 3.1±4.6 1.36 g/d: −7.7±3.1* control: 5.8±5.4 3.4 g/d: −15.1±2.7*‡ *HDL–C* control: 2.3±1.2 1.36 g/d: 2.3±0.8 control: 0.8±1.9 3.4 g/d: 2.7±1.5 *Percent change, relative to control:* *Total-C* 1.36 g/d: −4.1%‡ 3.4 g/d: −9.3%‡ *TLDL–C* 1.36 g/d: −10.3% 3.4 g/d: −15.2%‡ *HDL–C* 1.36 g/d: 0.5% 3.4 g/d: 0% *P < 0.05, relative to baseline ‡P < 0.05, relative to control
Blomqvist SM, 1993 (Ref. 81) (same as Vanhanen HT, 1993 (Ref. 82))	Randomized double-blind, placebo-controlled study.	N= 67 (47 M/ 20 F) moderately hypercholesterolemic subjects (N= 66 in Tables: control N=32; sitostanol ester N=34); plasma cholesterol concentration at baseline: 246 † 33 mg/dL.	(1) *Control* (RSO mayonnaise); (2) Sitostanol ester *5.8 g/d* (3.4 g/d free) —in 50 g RSO mayonnaise. *Stanol source:* NR.	Run-in period: 4 weeks; experimental period: 6 weeks.	Subjects replaced 50 g of daily fat intake with 50 g of RSO mayonnaise; a second 7-day diet record performed during the experimental period indicated that diet composition was similar to that during the run-in period. *Dietary intake during the standardization period (run-in):* Total fat (% TE): 37 Saturated fat (% TE): 12 Cholesterol (mg/d): 270	Cholesterol after 6 weeks (mg/dL): *Total-C* control: 225±27 sitostanol ester: 2–±34* *LDL–C* control: 134±18 sitostanol ester: 124±32† *HDL–C* control: 53±11 sitostanol ester: 51±12* †P < 0.01; * P < 0.001, relative to control

TABLE 2.—PLANT STANOL ESTERS AND CHD (STUDIES ARE LISTED IN REVERSE CHRONOLOGICAL ORDER)—Continued

Study	Design	Population	Plant stanol: dose/form	Duration	Dietary intakes	Results
Vanhanen HT, 1993 (Ref. 82) (same as Blomqvist SM, 1993 (Ref. 81))	PRandomized double-blind, placebo-controlled study.	N= 67 (47 M/ 20 F) moderately hypercholesterolemic subjects; (control N=33; sitostanol ester N=34); serum cholesterol selection criteria > 232 mg/dL.	(1) *Control* (RSO mayonnaise); (2) Sitostanol ester *5.8 g/d* (3.4 g/d free) —in 50 g RSO mayonnaise. *Stanol source:* NR.	Run-in period: 4 weeks; experimental period: 6 weeks.	Subjects replaced 50 g of daily fat intake with 50 g of RSO mayonnaise; a second 7-day diet record performed during the experimental period indicated that diet composition was similar to that during the run-in period. *Dietary intake during the standardization period (run-in):* Total fat (% TE): 37 Saturated fat (% TE): 12 Cholesterol (mg/d): 270	Cholesterol change from baseline period, mg/dL (cholesterol concentration at 6 weeks in mg/dL): *Total-C* control: −2.7±2.3 (225) itostanol ester: −17.0±2.3* (2–) *LDL–C* control: −1.5±2.7 (142) sitostanol ester: −14.3±2.3* (130) *HDL–C* control: −1.2±0.8 (53) sitostanol ester: −1.2±0.8 (52) *P < 0.05, relative to control
Vanhanen HT, 1992 (Ref. 64) (same as or partial study of Miettinen, TA, 1994 (Ref. 63))	Placebo-controlled, randomized double blind study.	N=24 (M and F) (control group N= 8; sitosterol group N= 9; sitostanol group N=7) hypercholesterolemic individuals (serum cholesterol > 232 mg/dL).	(1) RSO *control*; (2) Sitosterol: *0.625 or 0.722 g/d*; (3) Sitostanol: *0.630 g/d* —in 50 g/d of RSO mayonnaise; plant sterols/stanols are not esterified. *Stanol source:* rapeseed oil.	6 week run-in on RSO spread; 9 week period.	On average 50 g of visible dietary fat as butter, margarine, milk fat, sausages and cheeses was replaced by the fat spread. *Dietary intake during study:* Total fat: NR Saturated fat: NR Cholesterol: NR	*Percent change in cholesterol at end of 9 week study period, relative to control:* *Total-C* sitosterol group: −7.6(NS) sitostanol group: −9.7(NS) *At end of study* (mg/dL): *Total-C* control: 239±10 sitosterol group: 221±13 sitostanol group: 216±9 all NS *LDL–C:* NR *HDL–C:* NR

Table 2.—Plant Stanol Esters and CHD—continued

Acronyms and Abbreviations Used in Table
d day
dl deciliter
CI confidence interval
EU European
EU 3G European, 3 grams
F female
g gram
HDL–C serum high density lipoprotein cholesterol level
LDL–C serum low density lipoprotein cholesterol level
M male
mg milligram
N number
NCEP National Cholesterol Education Program
NR not reported
NS not statistically significant
% percent
P probability of type I error
TE total energy
Total–C serum total cholesterol level
RSO rapeseed oil (or canola oil)
US United States
US 2G United States, 2 grams
US 3G United States, 3 grams
VOSEM vegetable oil stanol ester-containing margarine
WSEM wood stanol ester-containing margarine
X times

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 8, 2000

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications loans:

General policies, types of loans, and loan requirements; published 9-8-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Salmon and steelhead; published 7-10-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Halogenated solvent cleaning; corrections and clarifications; published 9-8-00

Air quality implementation plans; approval and promulgation; various States:

New Hampshire, Rhode Island, and Vermont; published 7-10-00

Vermont; published 9-8-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

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Monensin and roxarsone; published 9-8-00

Color additives:

Luminescent zinc sulfide; exempt from ceritfication; published 8-8-00

Food for human consumption:

Food labeling—

Plant sterol/stanol esters and coronary heart disease; health claims; published 9-8-00

Medical devices:

Gastroenterology and urology devices—

Extracorporeal shock wave lithotripter; reclassification; published 8-9-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Insurance; partial or total immunity from tort liability for State agencies and charitable institutions; published 9-8-00

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Prevailing rate systems; published 8-9-00

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Freight and cargo transportation arrangement industry; published 8-9-00

STATE DEPARTMENT

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Immigrant visa fees; change in payment procedures; published 9-8-00

TRANSPORTATION DEPARTMENT

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Practice and procedure:

Regulatory fees (2000 FY); assessment and collection; published 7-18-00

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Scrapie in sheep and goats—

Consistent States; list (States conducting active programs consistent with Federal requirements); comments due by 9-14-00; published 8-15-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permits; comments due by 9-13-00; published 8-29-00

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 9-15-00; published 8-16-00

DEFENSE DEPARTMENT

Acquisition regulations:

Sealed bid and negotiated procurements; definition; comments due by 9-11-00; published 7-11-00

EDUCATION DEPARTMENT

Postsecondary education:

Federal Family Education Loan and William D. Ford Federal Direct Loan Programs; comments due by 9-11-00; published 7-27-00

Federal Perkins Loan Program; comments due by 9-11-00; published 7-27-00

Special Leveraging Educational Assistance Partnership Program; comments due by 9-11-00; published 7-27-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

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Colorado; comments due by 9-15-00; published 8-16-00

Air pollution, hazardous; national emission standards:

Boat manufacturing facilities; comments due by 9-12-00; published 7-14-00

Air programs:

Fuels and fuel additives—

Reformulated gasoline adjustment; comments due by 9-11-00; published 7-12-00

Stratospheric ozone protection—

Ozone-depleting substances; substitutes list; comments due by 9-11-00; published 7-11-00

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 9-13-00; published 8-14-00

Hazardous waste:

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Superfund program:

National oil and hazardous substances contingency plan—

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National priorities list update; comments due by 9-14-00; published 8-15-00

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North Dakota; comments due by 9-11-00; published 7-25-00

Radio frequency devices:

Ultra-wideband transmission systems rules; revision; comments due by 9-12-00; published 6-14-00

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:

Sealed bid and negotiated procurements; definitions; comments due by 9-11-00; published 7-11-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Physician fee schedule (2001 CY); payment policies; comments due by 9-15-00; published 7-17-00

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San Diego fairy shrimp; comments due by 9-11-00; published 8-21-00

San Diego fairy shrimp; correction; comments due by 9-11-00; published 8-25-00

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Large-flowered skullcap; reclassification; comments due by 9-11-00; published 7-12-00

INTERIOR DEPARTMENT

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Coast Guard

Merchant marine officers and seamen:

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TRANSPORTATION DEPARTMENT

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TREASURY DEPARTMENT

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Qualified tuition and qualified education loan payments; information reporting, including magnetic media filing requirements for information returns; comments due by 9-14-00; published 6-16-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3519/P.L. 106–264

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

Last List August 22, 2000

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