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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–00–12]

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Clarification of final rule.

SUMMARY: The purpose of this action is to clarify the intent of the requirement in the Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum, that the telephone number of a person voting in the pork checkoff referendum be included on the registration and certification form. The person's telephone number was for the administrative convenience of Farm Service Agency (FSA) office personnel in processing these forms. A person's otherwise valid ballot will not be invalidated if the person's phone number is not included on the registration and certification form.

EFFECTIVE DATE: November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; Stop 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone number 202/720–1115, fax 202/720–1125, or by e-mail Ralph.Tapp@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), a pork referendum was conducted during the period August 18, 2000, through September 21, 2000. The referendum was conducted pursuant to referendum rules published July 13, 2000, [65 FR 43498] Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum: final rule. The referendum was conducted among eligible pork producers who owned and sold one or more hogs or pigs and importers who imported pigs, hogs, pork or pork products to determine whether they favored the continuation of the Pork Promotion, Research, and Consumer Information Order. Producer in-person voting in the referendum was held September 19, 20, 21, 2000, at county FSA offices. Producer absentee ballots were available at those offices from August 18, 2000, through September 18, 2000. Importers could obtain ballots from the FSA headquarters office in Washington, DC, from August 18, 2000, through September 21, 2000. The representative period to establish voter eligibility was the period from August 18, 1999, through August 17, 2000.

Persons who wished to vote in the pork checkoff referendum had to complete and sign a registration and certification form that required the minimum information necessary to establish the identity of the person voting and to permit other interested persons an opportunity to challenge a person's vote. The registration and certification forms—Form LS–72–2, In-Person Registration and Certification (Envelope); Form LS–73, Pork Producer Absentee Voting; and Form LS–76, Pork Importer Mail Voting—required that a person include their name and address, or the name and address of the entity they represented if applicable, and the person's telephone number.

During the conduct of the referendum a question was raised concerning whether a ballot would be invalid if no telephone number was included on the registration and certification form. The telephone number was for the FSA county offices' administrative convenience to contact the voter in the event that such contact became necessary. The Agricultural Marketing Service never intended to invalidate an otherwise complete ballot simply because there was no phone number.

Authority: 7 U.S.C. 4801–4819.

Dated: November 22, 2000.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 00–30333 Filed 11–24–00; 9:42 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 95–029–3]

Animal Welfare; Perimeter Fence Requirements; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on October 18, 1999, we amended the Animal Welfare regulations to require that a perimeter fence be placed around outdoor housing facilities for marine mammals and certain other regulated animals. This document contains a correction to the list of large felines published in the final rule. Bobcats are not considered large felines and, therefore, we are removing them from the list of large felines that appears in the regulations.

DATES: Effective on November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on October 18, 1999 (64 FR 56142–56148, Docket No. 95–029–2), we amended the Animal Welfare regulations to require that a perimeter fence be placed around outdoor housing facilities for marine mammals and certain other regulated animals.

In the rule portion, § 3.127(d) contains an error in the list of large felines. We identified large felines as ''lions, tigers, leopards, cougars, bobcats, etc.'' However, bobcats are not considered large felines based on generally accepted and published morphometric

(measurement of height, weight, length, girth, etc.) data. Therefore, we are removing bobcats from the list of large felines in § 3.127(d). Based on this change, all outdoor housing facilities (i.e., facilities not entirely indoors) for bobcats would require a 6-foot perimeter fence or an alternative method identified in § 3.127(d)(1), (d)(2), (d)(3), and (d)(4) rather than an 8-foot fence.

This document also revises the authority citation for 9 CFR part 3 to reflect a revision to 7 CFR part 371 that took effect after our final rule was published.

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we are amending 9 CFR part 3 as follows:

PART 3—STANDARDS

1. The authority citation for part 3 is revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

§ 3.127 [Amended]

2. In § 3.127, the second sentence of the introductory text in paragraph (d) is amended by removing the word ''bobcats,''.

Done in Washington, DC, this 17th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–30286 Filed 11–27–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. SW008; Special Conditions No. 29–008–SC]

Special Conditions: Sikorsky Aircraft Corporation Model S–92 Helicopters, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Sikorsky Aircraft Corporation (Sikorsky) Model S–92 helicopters. These helicopters will have novel or unusual design features associated with the installation of electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is November 13, 2000. Comments must be received on or before January 12, 2001.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket No. SW008, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW008. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, FAA, Rotorcraft Directorate, Rotorcraft Standards, Fort Worth, Texas 76193–0110; telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Rules Docket No. SW008.'' The postcard will be date stamped and returned to the commenter.

Background

On November 5, 1990, Sikorsky applied for a new type certification of Model S–92 helicopters. Since applying for the new type certification, Sikorsky has requested two extensions of the type certification period. The first extension to August 29, 1999 was approved by the FAA on October 7, 1994, and the second extension to May 31, 2000 was approved on July 21, 1995. Sikorsky Model S–92 helicopters are 19-passenger Transport Category helicopters, powered by two General Electric Model CT7–8 engines. They will incorporate one auxiliary power unit for engine starting and back-up electrical power. The helicopters will have a conventional aluminum structure with some composite parts and highly integrated digital avionics.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Sikorsky must show that Sikorsky Model S–92 helicopters meet the applicable provisions of the regulations as listed below:

- 14 CFR Part 29, Amendment 29–1 through Amendment 29–45, inclusive;
- 14 CFR Part 36, Appendix H, Amendments 36–1 through the amendment effective at the time of certification; and
- Any special conditions, exemptions, and equivalent safety findings deemed necessary.

In addition, the certification basis includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Sikorsky Model S–92 helicopters must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant

to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Sikorsky Model S–92 helicopters will incorporate the following novel or unusual design features: electrical, electronic, or combination of electrical electronic (electrical/electronic) systems that perform critical control functions or display critical information, such as electronic flight instruments, required for continued safe flight and landing of the helicopter during operation in Instrument Meteorological Conditions (IMC); and Full Authority Digital Engine Control (FADEC) that will be performing engine control functions that are critical to the continued safe flight and landing of the helicopter during Visual Flight Rules (VFR) and Instrument Flight Rules (IFR) operations.

Discussion

Sikorsky Model S–92 helicopters, at the time of application, were identified as incorporating one and possibly more electrical/electronic systems, such as electronic flight instruments and FADEC. After the design is finalized, Sikorsky will provide the FAA with a preliminary hazard analysis that will identify any other critical functions required for safe flight and landing that are performed by the electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical control functions or provide critical displays. These advanced systems respond to the transient effects of induced electrical current and voltage caused by a HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment that a helicopter could be exposed to, one environment for VFR operations and a different environment for IFR operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical control functions or provide critical displays. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models' similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require the aircraft-installed systems that perform critical control functions or provide critical displays to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate, using a laboratory test, that the electrical/electronic systems that perform critical control functions or provide critical displays can withstand peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W

(100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As stated in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 kHz sine wave with 80 percent depth of modulation in the frequency range from 10 kHz to 400 MHz and 1 kHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—VFR ROTORCRAFT (CRITICAL CONTROL FUNCTIONS)

Field strength volts/meter

Frequency	Peak	Average
10 kHz–100 kHz	130	130
100 kHz–500 kHz	180	140
500 kHz–2 MHz	60	60
2 MHz–30 MHz	320	320
30 MHz–70 MHz	80	80
70 MHz–100 MHz	70	70
100 MHz–200 MHz	140	140
200 MHz–400 MHz	140	140
400 MHz–700 MHz	400	400
700 MHz–1 GHz	690	400
1 GHz–2 GHz	2400	80
2 GHz–4 GHz	5120	350
4 GHz–6 GHz	13700	570
6 GHz–8 GHz	130	80
8 GHz–12 GHz	4900	200
12 GHz–18 GHz	1300	560
18 GHz–40 GHz	1300	30

TABLE 2.—ROTORCRAFT (CRITICAL DISPLAY FUNCTIONS)

Field strength volts/meter

Frequency	Peak	Average
10 kHz–100 kHz	30	30
100 kHz–500 kHz	40	30
500 kHz–2 MHz	30	30
2 MHz–30 MHz	190	190
30 MHz–70 MHz	20	20
70 MHz–100 MHz	20	20
100 MHz–200 MHz	30	30
200 MHz–400 MHz	30	30
400 MHz–700 MHz	80	80
700 MHz–1 GHz	690	240
1 GHz–2 GHz	970	70
2 GHz–4 GHz	1570	350
4 GHz–6 GHz	7200	300
6 GHz–8 GHz	130	80
8 GHz–12 GHz	2100	80
12 GHz–18 GHz	500	330
18 GHz–40 GHz	780	20

Applicability

As previously discussed, this special condition is applicable to Sikorsky Model S–92 helicopters. Should Sikorsky apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopters.

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

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

Authority: The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Sikorsky Model S–92 helicopters.

Protection for Electrical and Electronic Systems From High-Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high-intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on November 13, 2000.

Michelle M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–30304 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. SW007; Special Condition No. 29–007–SC]

Special Conditions: Eurocopter France Model EC–155 Helicopters, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Eurocopter France (Eurocopter) Model EC–155 helicopters. These helicopters will have novel or unusual design features associated with the installation of electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions or provide critical displays from the effects of high-intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is October 31, 2000. Comments must be received on or before January 12, 2001.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket No. SW007, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW007. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, FAA, Rotorcraft Directorate, Rotorcraft Standards, Fort Worth, Texas 76193–0110; telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Rules Docket No. SW007.'' The postcard will be date stamped and returned to the commenter.

Background

On September 1, 1998, Eurocopter submitted an application for Type Validation of Model EC–155 Transport Category helicopters through the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, and the FAA Brussels Aircraft Certification Office (ACO). Model EC–155 helicopters are a derivative of Model AS365N3 helicopters that achieved FAA Type Certification on November 8, 1998. The main design differences between Model EC–155 and Model AS365N3 helicopters include the following: a gross weight increase from 4250 kg to 4800 kg; enlarged fuselage structure; a new 5-blade speriflex main rotor and composite fenestron blades; and a new avionics instrumentation package that includes a 3-axis digital Automatic Flight Control System (AFCS) and electronic displays.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Eurocopter must show that Model EC–155 helicopters meet the applicable provisions of the regulations as listed below:

—14 CFR 21.29.

—14 CFR part 29, Amendment 29–1 through Amendment 29–40 with the following exceptions:

—Excluding Amendment 29–38.

—Excluding 14 CFR 29.952, introduced at Amendment 29–35.

—Excluding 14 CFR 29.562, introduced at Amendment 29–29.

—Excluding 14 CFR 29.631, introduced at Amendment 29–40.

—Section 29.561(a), (b), and (d) at Amendment 29–1.

—Section 29.561(c) at Amendment 29–29.

—Section 29.571 at Amendment 29–20.

—Section 29.785 at Amendment 29–24.

—Section's 29.963, 29.973, and 29.975 at Amendment 29–26.

—Section 29.1305(a)(4)(i) at Amendment 29–16.

—14 CFR part 36, Appendix H through the latest amendment in effect at the time that the noise tests are conducted.

—Any Special conditions, Exemptions, and Equivalent Safety Findings deemed necessary.

In addition, the certification basis includes certain special conditions and equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Eurocopter Model EC–155 helicopters must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Eurocopter Model EC–155 helicopters will incorporate the following novel or unusual design features: electrical,

electronic, or a combination of electrical electronic (electrical/electronic) systems that will perform critical control functions or display critical information, such as electronic flight instruments that display critical information required for the continued safe flight and landing of the helicopter during operation in Instrument Meteorological Conditions (IMC); and Full Authority Digital Engine Control (FADEC) that will perform engine control functions that are critical to the continued safe flight and landing of the helicopter during Visual Flight Rules (VFR) and Instrument Flight Rules (IFR) operations.

Discussion

Eurocopter Model EC–155 helicopters, at the time of application, were identified as incorporating one and possibly more electrical/electronic systems, such as electronic flight instruments and FADEC. After the design is finalized, Eurocopter will provide the FAA with a preliminary hazard analysis that will identify any other critical functions required for safe flight and landing that are performed by the electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical control functions or provide critical displays. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment that a helicopter could be exposed to, one environment for VFR operations and a different environment for IFR operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical control functions or provide critical displays. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require the aircraft-installed systems that perform critical control functions or provide critical displays to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical control functions or provide critical displays can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As stated in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be

used. Suggested default values are a 1 kHz sine wave with 80 percent depth of modulation in the frequency range from 10 kHz to 400 MHz and 1 kHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—VFR ROTORCRAFT

Field strength volts/meter

Frequency	Peak	Average
10 kHz—100 kHz	150	150
100 kHz—500 kHz	180	150
500 kHz—2 MHz	140	140
2 MHz—30 MHz	610	610
30 MHz—70 MHz	80	80
70 MHz—100 MHz	150	150
100 MHz—200 MHz	300	140
200 MHz—400 MHz	160	140
400 MHz—700 MHz	540	400
700 MHz—1 GHz	2400	400
1 GHz—2 GHz	7000	250
2 GHz—4 GHz	8600	840
4 GHz—6 GHz	13700	1270
6 GHz—8 GHz	1800	800
8 GHz—12 GHz	8000	500
12 GHz—18 GHz	3300	560
18 GHz—40 GHz	1800	700

TABLE 2.—VFR ROTORCRAFT

Field strength volts/meter

Frequency	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	60	60
500 kHz—2 MHz	70	70
2 MHz—30 MHz	200	200
30 MHz—70 MHz	30	30
70 MHz—100 MHz	30	30
100 MHz—200 MHz	150	30
200 MHz—400 MHz	70	70
400 MHz—700 MHz	700	80
700 MHz—1 GHz	1700	240
1 GHz—2 GHz	5000	360
2 GHz—4 GHz	4500	360
4 GHz—6 GHz	7200	300
6 GHz—8 GHz	2000	330
8 GHz—12 GHz	3500	270
12 GHz—18 GHz	3500	330
18 GHz—40 GHz	780	20

Applicability

As previously discussed, this special condition is applicable to Eurocopter Model EC–155 helicopters. Should Eurocopter apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

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

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

Authority: The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Eurocopter Model EC–155 helicopters.

Protection for Electrical and Electronic Systems From High-Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high-intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on October 31, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–30303 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–273–AD; Amendment 39–11999; AD 2000–23–26]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model 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 ATR72 series airplanes, that requires a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. 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 ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking

could adversely affect the structural integrity of these airplanes.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

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 all Aerospatiale Model ATR72 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 23, 2000 (65 FR 51260). That action proposed to require a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the supplemental NPRM.

Conclusion

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

Cost Impact

The FAA estimates that 39 Aerospatiale Model ATR72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

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

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:

2000–23–26 Aerospatiale: Amendment 39–11999. Docket 97–NM–273–AD.

Applicability: All Model ATR72 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the ''Time Limits'' section of the ATR72 Maintenance Planning Document, Revision 4, dated July 1999, into the Airworthiness Limitations Section.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The Airworthiness Limitations revision shall be done in accordance with the ''Time Limits'' section of the ATR72 Maintenance Planning Document, Revision 4, dated July 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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 3: The subject of this AD is addressed in French airworthiness directive 95–105–026 (B), dated May 24, 1995.

Effective Date

(f) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29607 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–359–AD; Amendment 39–12000; AD 2000–23–27]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –301 series airplanes, that currently requires a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The existing AD also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. This amendment adds a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary. 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 the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

DATES: Effective January 2, 2001.

The incorporation by reference of Bombardier Service Bulletin S.B. 8–33–35, Revision B, dated September 25, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of January 2, 2001.

The incorporation by reference of de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 29546, June 1, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), FAA, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–11–21, amendment 39–10546 (63 FR 29546, July 6, 1998), which is applicable to certain Bombardier Model DHC–8–102, –103, and –301 series airplanes, was published in the **Federal Register** on August 23, 2000 (65 FR 51256). The action proposed to continue to require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The action also proposed to continue to require installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. Additionally, the action proposed to add a requirement for a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, and installation, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 73 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 98–11–21 take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $149,650, or $2,050 per airplane.

The new inspection that is required by this AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $8,760, or $120 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 removing amendment 39–10546 (63 FR 29546, July 6, 1998), and by adding a new airworthiness directive (AD), amendment 39–12000, to read as follows:

2000–23–27 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12000. Docket 99–NM–359–AD. Supersedes AD 98–11–21, Amendment 39–10546.

Applicability: Model DHC–8–102, –103, and –301 series airplanes; certificated in any category; serial numbers 002 though 010 inclusive, 012 through 201 inclusive, 203 through 209 inclusive, 211 through 215 inclusive, 217 through 220 inclusive, 222, and 223; except those airplanes on which de Havilland Modification 8/1114 or 8/1110 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(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 the possibility of a fire on an airplane due to chafing of the electrical wiring of the cabin ceiling lighting system, accomplish the following:

Restatement of Requirements of AD 98–11–21

Inspection for Wire Wear and Breakage

(a) Within 1,000 hours time-in-service or 6 months after July 6, 1998 (the effective date of AD 98–11–21, amendment 39–10546), whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, or Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) Perform a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights. Prior to further flight, replace any damaged wiring.

(2) Install teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158).

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'A', dated July 28, 1998, is acceptable for compliance with that paragraph.

New Requirements of This AD

Inspection for Installed Teflon Spiral Wrap

(b) Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first: Perform a one-time inspection to determine if teflon spiral wrap is installed on the wiring of the lavatory lighting system, in accordance with Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) If teflon spiral wrap is not installed, prior to further flight, install teflon spiral wrap on the wiring of the lavatory lighting system in accordance with the service bulletin.

(2) If teflon spiral wrap is installed, no further action is required by this paragraph.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 98–11–21, amendment 39–10546, 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 New York ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995; or Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998.

(1) The incorporation by reference of Bombardier Service Bulletin S.B. 8–33–35, Revision 'B', dated September 25, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995, was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 29546, June 1, 1998).

(3) Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 Canadian airworthiness directive CF–95–18R1, dated January 8, 1999.

Effective Date

(f) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 14, 2000.

Donald L. Riggin,

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

[FR Doc. 00–29606 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–79–AD; Amendment 39–11996; AD 2000–23–23]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires modification of the rib 1/wing center spar attachment. This amendment is necessary to prevent fatigue cracking at the rib 1/center spar angle and bottom corner fitting, which could result in reduced structural capability of the wing. This action is

intended to address the identified unsafe condition.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

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, 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 A330 and A340 series airplanes was published in the **Federal Register** on September 27, 2000 (65 FR 58013). That action proposed to require modification of the rib 1/wing center spar attachment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The following information describes the anticipated cost impact on U.S. operators for the required modification.

Model	Number of airplanes on U.S. Register	Number of work hours	Average labor rate per work hour	Cost of required parts	Per-airplane cost
A330	5	42	$60	$9,950	$12,470
A340	0	42	60	10,099	12,619

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished the modification of this AD, and that no operator would accomplish these actions in the future if this AD were not adopted. However, the FAA has been advised that the 5 airplanes currently on the U.S. Register have been modified in accordance with the requirements of this AD. Therefore, until additional affected airplanes (unmodified) are added to the U.S. Register, this AD imposes no additional cost on U.S. operators.

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:

2000–23–23 Airbus Industrie: Amendment 39–11996. Docket 2000–NM–79–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; excluding those on which Airbus Modification 43021 has been installed.

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 (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 fatigue cracking at the rib 1/center spar angle and bottom corner fitting, which could result in reduced structural capability of the wing, accomplish the following:

Modification

(a) Modify the rib 1/wing center spar attachment, as specified by paragraph (a)(1) or (a)(2), as applicable, of this AD.

(1) For Model A330 series airplanes: Modify before the accumulation of 9,600 total flight cycles or 29,900 total flight hours, whichever occurs first. Do the modification in accordance with Airbus Service Bulletin A330–57–3017, including Appendix 01, Revision 02, dated October 11, 1999.

(2) For Model A340 series airplanes: Modify before the accumulation of 9,300 total flight cycles or 37,200 total flight hours, whichever occurs first. Do the modification

in accordance with Airbus Service Bulletin A340–57–4022, including Appendices 01 and 02, dated October 8, 1999.

Note 2: Modification prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–57–3017, dated October 14, 1998, or Revision 01, dated April 9, 1999, is acceptable for compliance with the requirements of paragraph (a) of 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, Transport Airplane Directorate, FAA. 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.

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 A330–57–3017, including Appendix 01, Revision 02, dated October 11, 1999; and Airbus Service Bulletin A340–57–4022, including Appendices 01 and 02, dated October 8, 1999; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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 4: The subject of this AD is addressed in French airworthiness directives 2000–073–111(B) and 2000–074–136(B), both dated February 23, 2000.

Effective Date

(e) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29605 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–221–AD; Amendment 39–11997; AD 2000–23–24]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires an inspection to ensure correct installation of certain self-seal couplings in each nacelle, and corrective action, if necessary. This amendment also requires installation of a new clamp to the self-seal couplings. This action is necessary to prevent separation of the self-seal couplings, which could result in loss of engine oil pressure and a flight-crew-commanded engine shutdown. This action is intended to address the identified unsafe condition.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. 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 Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on September 29, 2000 (65 FR 58494). That action proposed to require an inspection to ensure correct installation of certain self-seal couplings in each nacelle, and corrective action, if necessary. That action also proposed to require installation of a new clamp to the self-seal couplings.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the vendor at no charge to operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

000–23–24 Saab Aircraft AB: Amendment 39–11997. Docket 2000–NM–221–AD.

Applicability: Model SAAB 2000 series airplanes, certificated in any category, having serial numbers –004 through –063 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the self-seal couplings, which could result in loss of engine oil pressure and a flight-crew-commanded engine shutdown, accomplish the following:

Inspection, Installation and Corrective Actions

(a) Within 3 months after the effective date of this AD, perform a one-time general visual inspection to ensure correct installation of the air-cooled oil cooler (ACOC) self-seal couplings in each nacelle, and install a new clamp to the self-seal couplings, in accordance with Saab Service Bulletin 2000–79–005, dated May 22, 2000. If any coupling is installed incorrectly, prior to further flight, perform the corrective actions specified in the service bulletin in accordance with the procedures specified in the service bulletin.

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

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.

Incorporation by Reference

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–79–005, dated May 22, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Link&oping, Sweden. 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 Swedish airworthiness directive 1–158, dated May 23, 2000.

Effective Date

(e) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29604 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–353–AD; Amendment 39–11998; AD 2000–23–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200, 747–300, 747SP, and 747SR Series Airplanes Powered by Pratt & Whitney JT9D–3 and JT9D–7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200, 747–300, 747SP, and 747SR series airplanes powered by Pratt & Whitney JT9D–3 or JT9D–7 series engines. This action requires inspections of the vertical chords of the aft torque bulkhead of the outboard nacelle struts, and corrective action, if necessary. This action also provides optional terminating action for the inspections. This action is necessary to detect and correct cracking of the vertical chords adjacent to the lower spar fitting, which could result in separation of the diagonal brace load path. Continued operation with a separated diagonal brace load path increases loads on the upper link, midspar fitting, and dual side links, which could result in separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 13, 2000.

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

Comments for inclusion in the Rules Docket must be received on or before January 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-

iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–353–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received numerous reports of fatigue cracking of the vertical chords of the aft torque bulkhead of the outboard nacelle struts on certain Boeing Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes powered by Pratt & Whitney JT9D–3 or JT9D–7 series engines. The cracks have been found adjacent to the lower spar fitting. Such cracking of the vertical chords adjacent to the lower spar fitting could result in separation of the diagonal brace load path. Continued operation with a separated diagonal brace load path, if not corrected, increases loads on the upper link, midspar fitting, and dual side links, which could result in separation of the strut and engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2201, dated September 28, 2000, which describes procedures for repetitive detailed visual, ultrasonic, and surface eddy current inspections to detect cracking of the vertical chords of the aft torque bulkhead of the outboard nacelle struts. The service bulletin also describes procedures for a modification that involves installation of doublers on the vertical chords, which constitutes terminating action for the repetitive inspections.

The service bulletin provides for deferment of the initial inspections if Boeing Service Letter 747–SL–54–055, dated April 24, 1998, has been accomplished. That service letter recommends accomplishment of detailed visual and high frequency eddy current inspections of the chords of the aft torque bulkhead during modification of the nacelle strut. The FAA finds that, if the inspections recommended in Boeing Service Letter 747–SL–54–055 were accomplished during the modification of the nacelle strut and wing in accordance with AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), the initial inspections required by this AD may be deferred until 3,000 flight cycles after accomplishment of Boeing Service Letter 747–SL–54–055.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking of the vertical chords adjacent to the lower spar fitting, which could result in separation of the diagonal brace load path. This AD requires accomplishment of the inspections specified in the service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the modification specified in the service bulletin, which will constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Difference Between Service Bulletin and This AD

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

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–353–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–25 Boeing: Amendment 39–11998. Docket 2000–NM–353–AD.

Applicability: Model 747–100, 747–200, 747–300, 747SP, and 747SR series airplanes powered by Pratt & Whitney JT9D–3 or JT9D–7 series engines; listed in Boeing Alert Service Bulletin 747–54A2201, dated September 28, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the vertical chords adjacent to the lower spar fitting, which could result in separation of the diagonal brace load path and lead to separation of the strut and engine from the airplane, accomplish the following:

Inspections

(a) Except as provided by paragraph (b) of this AD, prior to the accumulation of 14,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later: Accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a detailed visual inspection to detect cracking of the vertical chords of the aft torque bulkhead of the outboard nacelle struts, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2201, dated September 28, 2000. Thereafter, repeat this inspection at intervals not to exceed 600 flight cycles until paragraph (d) of this AD is accomplished.

(2) Perform surface eddy current and ultrasonic inspections to detect cracking of the vertical chords of the aft torque bulkhead of the outboard nacelle struts, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2201, dated September 28, 2000. Thereafter, repeat these inspections at intervals not to exceed 1,200 flight cycles until paragraph (d) of this AD is accomplished.

Optional Compliance Time

(b) If Boeing Service Letter 747–54–055, dated April 24, 1998, was accomplished on the airplane during the modification of the nacelle strut in accordance with AD 95–10–16, amendment 39–9233: Accomplishment of the initial inspection in paragraph (a) of this AD may be deferred until 3,000 flight cycles after accomplishment of the service letter.

Repair

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

Optional Terminating Action

(d) Accomplishment of the modification specified in Part 4 of Boeing Alert Service Bulletin 747–54A2201, dated September 28, 2000, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 2: 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.

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 747–54A2201, dated September 28, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 13, 2000.

Issued in Renton, Washington, on November 14, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29603 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–356–AD; Amendment 39–12004; AD 2000–23–31]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–82 (MD–82) and DC–9–83 (MD–83) series airplanes, and

Model MD–88 airplanes. This action requires deactivating the left and right lower sidewall lights located in the passenger compartment. This action is necessary to prevent arcing and heat damage of the Luminator fluorescent lamp holders located outboard of the Passenger Service Unit panel, which could result in smoke and fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Effective December 13, 2000.

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

Comments for inclusion in the Rules Docket must be received on or before January 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–356–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–356–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Airframe Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received a report from an operator of one instance of fire in the passenger compartment on a Model DC–9–82 (MD–82) airplane while the airplane was parked at the gate. Findings from the investigation indicate the source of the fire was due to arcing of the Luminator fluorescent lamp holder. Test findings indicate that the possibility of arcing exists when a combination of Page ballasts and Luminator fluorescent lamp holders is installed on these airplanes. Such arcing is attributed to the output of the Page ballast when fluorescent lamps are installed improperly in worn or deteriorated Luminator fluorescent lamp holders. The subject components on affected Model DC–9–83 (MD–83) series airplanes and MD–88 airplanes are identical to those installed on the affected Model DC–9–82 (MD–82) series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–33A115, dated August 10, 2000, which describes procedures for deactivating the left and right lower sidewall lights located outboard of the Passenger Service Unit panel.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent arcing and heat damage of the fluorescent lamp holders by deactivating the left and right lower sidewall lights located in the passenger compartment. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–356–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–23–31 McDonnell Douglas: Amendment 39–12004. Docket 2000–NM–356–AD.

Applicability: Model DC–9–82 (MD–82) and DC–9–83 (MD–83) series airplanes, and Model MD–88 airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin MD80–33A115, dated August 10, 2000.

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 arcing and heat damage of the Luminator fluorescent lamp holders located outboard of the Passenger Service Unit panel, which could result in smoke and fire in the passenger compartment, accomplish the following:

Deactivation

(a) Within 90 days after the effective date of this AD, deactivate the left and right lower sidewall lights located in the passenger compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–33A115, dated August 10, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The deactivation shall be done in accordance with Boeing Alert Service Bulletin MD80–33A115, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

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

Issued in Renton, Washington, on November 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29802 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–131–AD; Amendment 39–12003; AD 2000–23–30]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires installation of an additional drain at the fuselage aft section. This action is necessary to prevent mechanical blockage of the elevator control cables due to the freezing of water collected inside the fuselage between the rear pressure bulkhead and the fire wall of the auxiliary power unit. Such cable blockage could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 2, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

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 EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on August 29, 2000 (65 FR 52367). That action proposed to require installation of an additional drain at the fuselage aft section.

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 Revise Compliance Time

One commenter requests that the compliance time be relaxed beyond the 400 flight hours specified in the proposed AD. The commenter indicates that a 400-flight-hour compliance time would impose a burden on operators. In addition, the commenter points out that the referenced service bulletin was issued five years ago. The commenter states that if the actions described in the service bulletin are urgent enough to drive a compliance time of 400 flight hours, then it should not take five years to determine that the operator has that amount of time to take corrective action. The commenter suggests that the compliance time be revised to align with the time recommended in the referenced service bulletin, which states ''at operator's discretion.''

The FAA concurs partially. The FAA does not agree that definition of the compliance time should be left to the discretion of operators. However, the FAA agrees that a 400-flight-hour compliance time is too restrictive. The FAA finds that extending the compliance time to 1,200 flight hours should coincide with an operator's ''3A'' check and will not adversely affect safety. Paragraph (a) of the final rule has been revised accordingly.

Request To Add Requirement

The same commenter expresses concern that because the original drain line has a bend, and since the new drain line is located in an unlit area, it is difficult to visually inspect for blockage. The commenter suggests passing an object through the drain line to check for obstructions.

The FAA does not concur. Accomplishment of the inspection should be able to be accomplished by shining a flashlight through the new drain, which has a straight port. The inspection should not require passing an object through the drain line, which could damage the drain line. No change to the final rule is necessary.

Conclusion

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

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $34 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $126,800, or $634 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2000–23–30 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12003. Docket 2000–NM–131–AD.

Applicability: Model EMB–120 series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 120–53–0064, dated October 31, 1995.

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 mechanical blockage of the elevator control cable due to the freezing of water collected inside the fuselage between the rear pressure bulkhead and the fire wall of the auxiliary power unit, which could result in reduced controllability of the airplane, accomplish the following:

Drain Installation

(a) Within 1,200 flight hours after the effective date of this AD, install an additional drain at the fuselage aft section, in accordance with EMBRAER Service Bulletin 120–53–0064, dated October 31, 1995.

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, Atlanta Aircraft Certification Office (ACO), FAA.

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The installation shall be done in accordance with EMBRAER Service Bulletin 120–53–0064, dated October 31, 1995. 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 95–11–01, dated November 22, 1995.

Effective Date

(e) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29801 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–163–AD; Amendment 39–12001; AD 2000–23–28]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes, that currently requires repetitive testing of the engine fire shutoff switch (EFSS) to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. That AD also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. This amendment adds various actions that would terminate the repetitive testing requirements. This amendment is prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified by this AD are intended to prevent damage to the EFSS solenoid and to the override mechanism, and consequent failure of the EFSS due to overheating of the solenoid; such failure could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire.

DATES: Effective January 2, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of January 2, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 27, 1997 (62 FR 25837, May 12, 1997).

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

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–10–11, amendment 39–10023 (62 FR 25837, May 12, 1997), which is applicable to all Boeing Model 777 series airplanes, was published in the **Federal Register** on May 19, 2000 (65 FR 31837). The action proposed to terminate the repetitive testing of the engine fire shutoff switch (EFSS) required by AD 97–10–11.

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.

Supportive Comment

One commenter concurs with the proposed rule and indicates that it has almost completed the terminating action on its entire fleet.

Request for Exemption

One commenter, an operator, requests that an exemption be added to the proposed rule for airplanes recently delivered, if the operator can prove by inventory records that it has at no time purchased or borrowed the EFSS with the part numbers specified in this proposed rule. The commenter states that the proposal does not affect operators with recently delivered airplanes that were not affected by AD 97–10–11. Additionally, the commenter notes that at no time did it have the old EFSS in its system nor did it replace an EFSS on any of its in-service airplanes. The commenter concludes that this proposed rule should not be applicable to it.

The FAA is unable to grant an exemption in light of the fact that paragraph (d) of this final rule prohibits future installation of the defective EFSS [engine fire control module having part number (P/N) 233W6201–1, or engine fire switches having P/N S231W263–1 or –2]. Therefore, this requirement affects any airplanes delivered after this final rule is issued. However, the FAA recognizes from the commenter's interpretation of paragraph (c) of the final rule that this paragraph requires further clarification. The FAA's intent is to require removal and replacement of the engine fire control module only if it contains a defective EFSS. Therefore, paragraph (c) of this final rule has been revised to add an option to verify that the improved engine fire control module is installed, which would constitute terminating action for the repetitive testing requirements in paragraph (b) of the final rule.

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 change

previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 196 airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 97–10–11, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on the U.S. operators is estimated to be $2,880, or $60 per airplane, per testing cycle.

The new actions that are required by this AD action take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,054 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $197,472, or $4,114 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 removing amendment 39–10023 (62 FR 25837, May 12, 1997), and by adding a new airworthiness directive (AD), amendment 39–12001, to read as follows:

2000–23–28 Boeing: Amendment 39–12001. Docket 99–NM–163–AD. Supersedes AD 97–10–11, Amendment 39–10023.

Applicability: All Model 777 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the engine fire shutoff switch (EFSS) solenoid and to the override mechanism, and consequent failure of the EFSS, which could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire, accomplish the following:

Restatement of Actions Required by AD 97–10–11

Repetitive Testing of the EFSS

(a) For all airplanes: Within 14 days after May 27, 1997 (the effective date of AD 97–10–11, amendment 39–10023), perform a test of the EFSS of both the left- and right-hand engines to determine if the override mechanism and the switch handle are operational, in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997.

(1) If the override mechanism and the switch handle of the EFSS are operational, prior to further flight, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable, in accordance with the alert service bulletin.

(i) For Group 1 airplanes identified in the alert service bulletin: Install a collar on circuit breaker C26612 of panel P310 of the standby power management panel. Following accomplishment of this installation, prior to further flight, install placards near the EFSS of both engines and near the auxiliary power unit (APU) EFSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch.

(ii) For Group 2 airplanes identified in the alert service bulletin: Ensure that a collar is installed on circuit breaker C26612 of panel P310 of the standby power management panel. If a collar is not installed, prior to further flight, install a collar on circuit breaker C26612 of panel P310 of the standby power management panel.

(2) If the override mechanism or the switch handle of the EFSS is not operational, prior to further flight, replace the EFSS with a new or serviceable EFSS, in accordance with the alert service bulletin.

(b) For all airplanes: Repeat the requirements of paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours.

New Actions Required by This AD

Terminating Action

(c) For all airplanes: Within 2 years after the effective date of this AD, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997.

(1) Verify that the airplane does not have an engine fire control module having part number (P/N) 233W6201–1, and that the airplane configuration is equivalent to that specified in the alert service bulletin. If the airplane meets the requirements in this paragraph, no further action is required by this AD.

(2) If the airplane does not meet the requirements specified in paragraph (c)(1) of this AD: Remove the engine fire control module, P/N 233W6201–1, and replace it with P/N 233W6201–5; activate the circuit breaker C26612 in the P310 panel; and remove the placards in the flight deck compartment; in accordance with the alert service bulletin. Accomplishment of this paragraph constitutes terminating action for the repetitive testing requirements of paragraph (b) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an engine fire control module, P/N 233W6201–1, or engine fire switches P/N S231W263–1 or –2, on any airplane.

Alternative Methods of Compliance

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

Note 2: 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.

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997, and Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997.

(1) The incorporation by reference of Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997, was approved previously by the Director of the Federal Register as of May 27, 1997 (62 FR 25837, May 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) This amendment becomes effective on January 2, 2001.

Issued in Renton, Washington, on November 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29799 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 99F–1719]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-(diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard. This action is in response to a petition filed by Angus Chemical Co.

DATES: This rule is effective November 28, 2000. Submit written objections and requests for a hearing by December 28, 2000.

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

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 11, 1999 (64 FR 31593), FDA announced that a food additive petition (FAP 9B4668) had been filed by Angus Chemical Co., c/o Phillip A. Johns, 10900 Silent Wood Pl., North Potomac, MD 20878–4829. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4-(diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a slimicide in the manufacture of food-contact paper and paperboard is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 176.300 should be amended as set forth below.

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

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

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

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by December 28, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.300 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * *
4-(Diiodomethylsulfonyl) toluene (CAS Reg. No. 20018–09–01).	At a maximum level of 0.2 pound per ton (100 grams/1,000 kilograms) of dry weight fiber.
* * *	* * *

* * * * *

Dated: November 14, 2000.

L. Robert Lake,

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

[FR Doc. 00–30328 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Salinomycin 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 salinomycin and bacitracin methylene disalicylate Type A medicated articles to make two-way combination drug Type C medicated feeds for broiler, roaster, and replacement (breeder and layer) chickens. The Type C medicated feeds are used for prevention of coccidiosis and as an aid in the prevention and control of necrotic enteritis in broiler, roaster, and replacement (breeder and layer) chickens; and for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency in roaster and replacement (breeder and layer) chickens. Previously established acceptable daily intakes (ADI's) for total residues of bacitracin and salinomycin are also being codified.

DATES: This rule is effective November 28, 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 141–136 that provides for use of approved BIO-COX® (30 or 60 grams per pound (g/lb) of salinomycin activity) and BMD® (10, 25, 30, 40, 50, 60, or 75 g/lb bacitracin methylene disalicylate) Type A medicated articles to make combination drug Type C medicated feeds for use in broiler, roaster, and replacement (breeder and layer) chickens. The combination Type C medicated feeds containing 40 to 60 g/ton salinomycin and 4 to 50 g/ton bacitracin methylene disalicylate are used for prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain and improved feed efficiency in roaster and replacement (breeder and layer) chickens. The combination Type C medicated feeds containing 40 to 60 g/ton salinomycin and 50 g/ton bacitracin methylene disalicylate are used for the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin in broiler, roaster, and replacement (breeder and layer) chickens. The combination Type C medicated feeds containing 40 to 60 g/ton salinomycin and 100 to 200 g/ton bacitracin methylene disalicylate are used for the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin in broiler, roaster, and replacement (breeder and layer) chickens. The NADA is approved as of September 20, 2000, and the regulations are amended in 21 CFR 558.550 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the regulations are amended in 21 CFR part 556 to add the previously established ADI's for total residues of bacitracin and salinomycin, and editorially, to reflect current format.

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

21 CFR Part 556

Animal drugs, Food.

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 parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.70 is revised to read as follows:

§ 556.70 Bacitracin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of bacitracin is 0.05 milligram per kilogram of body weight per day.

(b) *Tolerances.* The tolerance for residues of bacitracin from zinc bacitracin or bacitracin methylene disalicylate in uncooked edible tissues of cattle, swine, chickens, turkeys, pheasants, and quail, and in milk and eggs is 0.5 part per million.

3. Section 556.592 is added to subpart B to read as follows:

§ 556.592 Salinomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of salinomycin is 0.005 milligram per kilogram of body weight per day.

(b) [Reserved]

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 558.550 is amended by adding paragraphs (a)(3), (d)(1)(xx), and (d)(1)(xxi); by redesignating paragraphs (d)(3)(ii), (d)(3)(iii), and (d)(3)(iv) as paragraphs (d)(3)(iv), (d)(3)(vi), and (d)(3)(vii), respectively; and by adding paragraphs (d)(3)(ii), (d)(3)(iii), and (d)(3)(v) to read as follows:

§ 558.550 Salinomycin.

(a) * * *

(3) To 046573 for use as in paragraphs (d)(1)(xv), (d)(1)(xvi), (d)(1)(xviii) through (d)(1)(xxi), and (d)(3)(ii) through (d)(3)(vii) of this section.

* * * * *

(d) * * *

(1) * * *

(xx)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; and bacitracin methylene disalicylate, 50 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.

(C) *Limitations.* Feed continuously as sole ration. Do not feed to laying chickens. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by 063238; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) in this chapter.

(xxi)(A) *Amount per ton.* Salinomycin, 40 to 60 grams; and bacitracin methylene disalicylate, 100 to 200 grams.

(B) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.

(C) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 grams per ton). Do not feed to laying chickens. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by 063238; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) in this chapter.

* * * * *

(3) * * *

(ii) *Amount per ton.* Salinomycin, 40 to 60 grams, and bacitracin methylene disalicylate, 4 to 50 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration. Discontinue use prior to sexual maturity. Do not feed to laying chickens. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by 063238; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

(iii) *Amount per ton.* Salinomycin, 40 to 60 grams, and bacitracin methylene disalicylate, 50 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.

(B) *Limitations.* Feed continuously as sole ration. Discontinue use prior to sexual maturity. Do not feed to laying chickens. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by 063238; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

* * * * *

(v) *Amount per ton.* Salinomycin, 40 to 60 grams, and bacitracin methylene disalicylate, 100 to 200 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.

(B) *Limitations.* Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 grams per ton). Discontinue use prior to sexual maturity. Do not feed to laying chickens. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by 063238; bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: November 6, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–30327 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[TD 8899]

RIN 1545–AW25

Definition of a Qualified Interest in a Grantor Retained Annuity Trust and a Grantor Retained Unitrust; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, September 5, 2000 (65 FR 53587), relating to the definition of a qualified interest under section 2702 of the Internal Revenue Code.

DATES: This correction is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: James F. Hogan (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject of these corrections are under section 2702 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8899) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8899), which were the subject of FR Doc. 00–22544, is corrected as follows:

§ 25.2702–3 [Corrected]

1. On page 53589, column 1, § 25.2702–3(b)(3), the paragraph heading ''*Payment of annuity amount.*'' is corrected to read ''*Period for payment of annuity amount.*''.

2. On page 53589, column 1, § 25.2702–3(b)(4), first sentence, the language ''An annuity amount payable based on the anniversary date of the creation of the trust must be paid by the anniversary date.'' is corrected to read ''An annuity amount payable based on the anniversary date of the creation of the trust must be paid no later than 105 days after the anniversary date.''.

3. On page 53589, column 2, § 25.2702–3(c)(3), the paragraph heading ''*Payment of unitrust amount.*'' is corrected to read ''*Period for payment of unitrust amount.*''.

4. On page 53589, column 2, § 25.2702–3(c)(4), first sentence, ''A unitrust amount payable based on the anniversary date of the creation of the trust must be paid by the anniversary date.'' is corrected to read ''A unitrust amount payable based on the anniversary date of the creation of the trust must be paid no later than 105 days after the anniversary date.''.

Cynthia E. Grigsby,

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

[FR Doc. 00–30265 Filed 11–27–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–130–1–7473a; FRL–6907–8]

Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Malfunction and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern 30 TAC, Chapter 101, General Air Quality Rules, General Rules, specifically, the reporting and recordkeeping requirements for excess emissions resulting from Startup, Shutdown, Malfunction, and Maintenance (SSM) episodes. The EPA is approving these revisions to regulate excess emissions in accordance with the requirements of the Federal Clean Air Act (the Act) and EPA's policy on excess emissions.

DATES: This rule is effective on January 29, 2001 without further notice, unless EPA receives adverse comment by December 28, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Action Is EPA Taking?

On July 31, 2000, George W. Bush, the Governor of Texas submitted the Texas 30 TAC Chapter 101, General Air Quality Rules, General Rules, as a revision to the existing Texas SIP. Texas specifically submitted revisions to sections 101.01 concerning Definitions; 101.06 concerning Upset Reporting and Recordkeeping Requirements; 101.07 concerning Maintenance, Startup and Shutdown Reporting, Recordkeeping and Operational Requirements; and 101.11 concerning Demonstrations.

In this document, we are approving these revisions to the Texas SIP. For more information on the SIP revision and our evaluation, please refer to our Technical Support Document (TSD) dated October 2000.

2. Where Can I Find EPA Policies on Excess Emission During SSM?

You can find our policies on excess emissions during SSM in the following documents: (1) Memoranda from Kathleen Bennett, formerly Assistant Administrator for Air, Noise and Radiation dated September 28, 1982, and February 15, 1983 (the Bennett Memo—old policy), and (2) Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated September 20, 1999 (the Herman Memo—new policy). The Herman Memo supplements the Bennett Memo. Our TSD dated October 2000, contains both of these documents.

3. Is There a Difference Between EPA's Old Policy on Excess Emission and the New Policy?

No, there is not a significant difference between EPA's old policy and the new policy on excess emission. The new policy on excess emission during SSM episodes supplements and reaffirms the old policy. As in the old policy, we reiterate that, under the Act, all excess emissions during SSM episodes are violations of applicable emission limitations. However, we believe it would be inequitable to penalize a source for occurrences beyond the company's control. A source has the burden of proving that the excess emissions were due to circumstances entirely beyond the control of the operator or the owner.

For a review of the Herman Memo and Bennett Memo, please refer to our TSD dated October, 2000.

4. What Does the New Policy Say?

The new policy discusses our intent to generally treat excess emissions of lead and sulfur dioxide differently from those of other pollutants. *See* pages 1 and 2 of the attachment to the Herman Memo. The new policy specifies a list of objective criteria that a source with excess emissions should meet in order for the source to avoid potential enforcement action. *See* pages 3, and 4 of the attachment to the Herman Memo. The new policy also contains suggestions for creating source category specific rules concerning excess emission during startup and shutdown that will comply with the Act. *See* pages 5 and 6 of Attachment to the Herman Memo.

5. What Does the Current Texas Approved SIP Rule Say About Excess Emission During SSM?

We approved the current SIP rule, for Texas, on excess emissions during SSM episodes in the **Federal Register** (37 FR 10895) dated May 31, 1972. Since that time, Texas has adopted revisions to its rule on excess emissions, but those revisions have never been approved in the SIP. Section 101.06 of the approved SIP rule says that, a source must report its ''major'' upset condition with excessive emissions to the local air pollution control agency or the Executive Director. However, the approved SIP rule did not specify what constituted a ''major'' upset condition.

6. What Are Advantages of the New Texas Rule Revision?

The revisions to Chapter 101, General Air Quality Rules, General Rules will have the following advantages by: (1) Streamlining paper work and resources, (2) assisting enforcement in focusing on major and more frequent upsets, (3) making reporting criteria more consistent among various media (air and hazardous waste programs), and (4) adopting the burden of proof criteria similar to those listed in the Herman Memo of September 20, 1999.

7. What Is a Reportable Quantity?

Reportable Quantity (RQ) is a threshold limit below which a source does not have to report its excess emission to the TNRCC. In this rule when a source exceeds an emission limitation by so many pounds of an individual air contaminant or so many pounds of mixtures of air contaminants, the source will have to report its excess emissions to the TNRCC. We have adopted and used the RQ concept in the 40 CFR parts 355 and 370 (63 FR 31267, dated June 8, 1998), Emergency Planning and Community Right-To-Know Act (EPCRA), and in the Table 302.4 of 40 CFR Chapter 1 (July 1, 1997 Edition), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), in the past. Therefore, use of RQ as a gauge or baseline default value for reporting emissions or discharges is not a new regulatory idea.

8. What Does a Source Do If Its Excess Emission During SSM Is Less Than RQ?

If excess emission during an SSM episode is less than RQ, the source does not have to report that particular excess emission to the TNRCC. The source that experiences an excess emission less than RQ will still have to maintain information about such excess emissions and make the information available to the State and EPA during inspections or upon request.

9. Who Has To Report an Excess Emission During SSM?

All sources that experience an excess emission equal to or greater than RQ, during an SSM episode, need to report their excess emissions. This rule does not exempt a small source from reporting its excess emission during an SSM episode, if the excess emission equals or exceeds the RQ limit.

10. Do Minor Sources Have To Report Their Excess Emission During SSM?

Yes, minor sources have to report their excess emission during an SSM episode. Synthetic minor sources have to report their excess emission during SSM episodes, too. Reporting excess emissions has to do with the amount of RQ, and has nothing to do with the size (minor, synthetic minor, or major) of a facility or the source category/type of facility.

11. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

12. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rule making body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations that we approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

13. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

14. What Areas in Texas Will These Rules Affect?

These rule revisions will affect the entire State of Texas and is not specific to a certain area or part of the State. If you are in Texas, you need to refer to these rules to find out if and how these rules will affect you.

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 29, 2001 without further notice unless we receive adverse comment by December 28, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4). For the same reason, this proposed 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 proposed 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 proposed 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. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. The 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 101 by:

a. Revising the heading immediately above the entry for section 101.1 to read ''Chapter 101—General Air Quality Rules, Subchapter A—General Rules.''

b. Revising the entries for sections 101.1, 101.6, 101.7, and 101.11.

The revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State adoption date	EPA citation date	Explanation
Chapter 101—General Air Quality Rules Subchapter A—General Rules				
Section 101.1	Definitions	06/29/2000	11/28/00 65 FR 70794	Reportable Quantity and Reportable Upset only.

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State adoption date	EPA citation date	Explanation
*	* *	*	*	* *
Section 101.6	Upset reporting and recordkeeping requirements.	06/29/2000	11/28/00 65 FR 70794	
Section 101.7	Maintenance, startup and shutdown reporting, recordkeeping and operational requirements.	06/29/2000	11/28/00 65 FR 70794	
*	* *	*	*	* *
Section 101.11	Demonstrations	06/29/2000	11/28/00 65 FR 70794	
*	* *	*	*	* *

[FR Doc. 00–30107 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0266; FRL–6908–3]

California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of a direct final rule paragraph.

SUMMARY: Due to an adverse comment, EPA is removing a paragraph included in a direct final rule approving revisions to the California State Implementation Plan. EPA published the direct final rule on September 18, 2000 (65 FR 56251), approving a rule revision from the San Diego County Air Pollution Control District (SDCAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by October 18, 2000, the rule would not take effect and timely notice would be published in the **Federal Register**. However, EPA did not publsh the withdrawal before the effective date of the rule and is, therefore, removing a paragraph added by that rule. EPA has received adverse comments on that direct final rule and may address these comments in a final action within the near future. EPA will not institute a second comment period on this future final action.

DATES: 40 CFR 52.220(c)(255)(i)(F)(1) published at 65 FR 56251 is removed as of November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the September 18, 2000 **Federal Register** (65 FR 56251), and in the proposed rule located in the proposed rule section of the September 18, 2000 **Federal Register** (65 FR 56278).

EPA received an adverse comment concerning SDCAPCD Rule 67.11—Wood Products Coating Operations and the addition of 40 CFR 52.220(c)(255)(i)(F)(1). Prior to the close of the comment period, SDCAPCD requested that we withdraw our direct final approval action on the rule. Consequently, we are removing only the portion of the direct final rule published at 65 FR 56251 concerning SDCAPCD Rule 67.11. Today's action does not affect our other direct final rulemaking action approving Bay Area Air Quality Management District Rule 8–11—Metal container, Metal Closure, and Metal Coil Coating.

To conclude, 40 CFR 52.220(c)(255)(i)(F)(1) published at 65 FR 56251 is removed as of November 28, 2000.

List of Subjects in 40 CFR Part 52

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

Dated: November 1, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by removing and reserving paragraph (c)(255)(i)(F).

[FR Doc. 00–30115 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6906–4]

RIN 2060–AI41

Protection of Stratospheric Ozone: Incorporation of Clean Air Act Amendments for Reductions in Class I, Group VI Controlled Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this action, EPA is taking direct final action on the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). We are undertaking these revisions to implement recent changes (Oct. 21, 1998) to the CAA, which direct EPA to conform the U.S. methyl bromide phasedown schedule to the schedule for industrialized nations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). Specifically, today's amendments reflect the Protocol's reductions in the production and consumption of class I, Group VI controlled substances (methyl bromide) for the 2001 calendar year and subsequent calendar years, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of class I, Group VI controlled substances.

DATES: This rule will become effective on January 29, 2001 without further notice unless the Agency receives adverse comment by December 28, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–2000–24, U.S. Environmental Protection Agency, 2000 Pennsylvania Ave., NW, Room M–1500, Washington, D.C. 20460.

Materials relevant to this rulemaking are contained in Public Docket No. A–2000–24. The docket is located in room M–1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8 am until 5:30 pm, Monday through Friday. We may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996 between the hours of 10 am and 4 pm Eastern Standard Time, or Amber Moreen, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 401 M Street, S.W., Washington, D.C., 20460, (202) 564–9295.

SUPPLEMENTARY INFORMATION: We are revising the methyl bromide phaseout regulation as a direct final rule without prior proposal because we view these revisions, directly mandated by the statutory language established by Congress, as noncontroversial and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to update the methyl bromide phaseout schedule if adverse comments are filed. This rule will be effective on January 29, 2001 without further notice unless we receive adverse comment by December 28, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these revisions to part 82 subpart A should do so at this time. EPA reiterates that the phasedown and phaseout levels and dates are statutorily required, and that it therefore has no discretion to alter the schedule.

Recognizing the expressed intent of Congress in recent changes to the CAA to include certain types of exemptions, the preamble to today's direct final rule also notifies the public of our intent to propose future rulemakings concerning quarantine and preshipment exemptions, as well as the post-phaseout critical and emergency use exemptions.

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I. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing, by the U.S. and other countries, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1]

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of class I ozone-depleting substances as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide.

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), and December 10, 1993 (58 FR 65018).

All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: production + imports—exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the class I controlled ozone-depleting substances are in Appendix A and Appendix F in Subpart A of 40 CFR Part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in Appendix B and Appendix F in Subpart A.

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed (40 CFR 82.4(b)). They also allow limited manufacture if the substances are (1) exported to countries operating under Article 5 of the Protocol or (2) produced for essential uses as authorized by the Protocol and the regulations. Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) previously used, (2) imported for essential uses as authorized by the Protocol and the regulations, (3) imported for destruction or transformation only, or (4) a transhipment or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4(d), 82.13(g)(2)).

II. What Is Methyl Bromide?

Methyl bromide is an odorless and colorless gas used in the U.S. and throughout the world as a fumigant. Methyl bromide, which is toxic to living things, is used in many different situations to control a variety of pests, such as: insects, weeds, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide, as well as information on the basis for listing methyl bromide as a class I substance, can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Updated information on methyl bromide can be found at the following sites of the World Wide Web: www.epa.gov/ozone/mbr/ and www.teap.org or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

III. What Is the Regulatory Background Relating Specifically to Methyl Bromide?

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). Consistent with the CAA requirements for newly listed class I ozone-depleting substances, this rule established a 2001 phaseout for methyl bromide. In the rule published in the **Federal Register** on December 30, 1993 (58 FR 69235), we established baseline methyl bromide production and consumption allowances for specific companies in § 82.5 and § 82.6.

At their 1997 meeting, the Parties agreed to establish the phaseout schedule for methyl bromide in industrialized countries. The U.S. Congress followed by amending the CAA (in Oct. 1998) to direct EPA to promulgate regulations reflecting the Protocol phaseout date of 2005, with interim phasedown steps in 1999, 2001, and 2003. EPA promulgated a regulation that was published in the **Federal Register** on June 1, 1999 (64 FR 29240), instituting the initial interim reduction of 25 percent in the production and import [2] of methyl bromide for the 1999 and 2000 control periods. Currently, we grant 75 percent of the 1991 baseline methyl bromide allowances for each control period until 2001.

We expect to publish a proposed rule adding exemptions for production and import of quantities of methyl bromide that are used for quarantine and preshipment in late 2000. That proposal may also include a proposed ban on trade of methyl bromide with non-Parties to the Protocol, as decided by the Parties in 1997.

IV. How Is EPA Phasing Out Methyl Bromide?

a. What Does the Protocol Say About the Phaseout of Methyl Bromide?

As stated in Section I of this preamble, the U.S. was one of the original signatories to the Protocol. The U.S. ratified the Protocol on April 21, 1988. Today's amendment is designed to complete implementation of article 2H of the Protocol. Paragraphs 3 through 5 establish the remaining phaseout schedule for methyl bromide:

> 3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2001, and in the twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, fifty percent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, fifty percent of its calculated level of production in 1991 * * *
>
> 4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2003, and in the twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, thirty percent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, thirty percent of its calculated level of production in 1991 * * *
>
> 5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero * * *

Thus, Article 2H establishes obligations for the U.S. to reduce and eventually phase out its production and import of

[2] The formula for ''consumption'' is production + import—export. Because ''consumption'' encompasses ''production and import'', consumption is included by reference.

methyl bromide [3], apart from exemptions discussed later in this preamble and quantities of methyl bromide used for quarantine and preshipment uses.

b. What Is the Legal Authority for Phasing Out Methyl Bromide?

In response to ratification of the Protocol, Congress enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection. As mentioned in section III of this preamble, Congress amended Title VI of the CAA with Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277; October 21, 1998), directing EPA to reflect in its regulations the Protocol's most recent phasedown schedule for methyl bromide, and providing authority to create certain types of exemptions.

Today's amendments are designed to ensure that the U.S. meets its obligations under the Protocol and the CAA. Section 764(a) of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277; October 21, 1998) requires EPA to bring the schedule for the phaseout of methyl bromide into accordance with the Protocol. Specifically, the amendments direct EPA to:

> * * * not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol Treaty as in effect on the date of the enactment of this subsection.

This language, which amends Section 604 of the CAA, adding a new paragraph (h), requires us to extend the timeline for the phasedown in § 82.7 so that it is in accordance with the current phasedown schedule under the Protocol. Thus, we are changing the phaseout date from January 1, 2001 to January 1, 2005.

EPA derives its authority for today's action from Section 604(h) of the Act.

c. What Are Today's Phasedown Changes?

In accordance with the Protocol's methyl bromide phaseout schedule, we are changing the percentage of baseline allowances for class I, Group VI substances granted in § 82.7. We are granting the following allowances to the companies listed in § 82.5 and § 82.6 for methyl bromide: 50 percent of baseline production and consumption allowances for 2001 and 2002; 30 percent of baseline production and consumption allowances for 2003 and 2004; and 0 percent of baseline production and consumption allowances beginning January 1, 2005.

V. What Are the Additional Changes Necessary To Facilitate the New Phaseout Schedule?

Many sections of Part 82 of the current regulations contain the original methyl bromide phaseout date, January 1, 2001. To update the regulations, we are changing many instances of ''January 1, 2001,'' when referencing methyl bromide, to ''January 1, 2005.'' In addition, in adding Group VI controlled substances to 82.4(b), we are providing for the production of methyl bromide past the phaseout date using Article 5 allowances.

VI. Are the Existing Regulations Being Amended To Reflect the Critical and Emergency Use Provisions (§ 82.3 (Definitions) and § 82.7)?

a. What Exemptions Does the Montreal Protocol Provide Beginning in 2005?

Because the CAA, by requiring consistency with the Montreal Protocol, does not allow these exemptions to be available until the complete phaseout in 2005, they cannot be utilized during the required interim phasedown period between now and December 31, 2004. Today, we are creating two reserved sections in the regulations, at § 82.4 (v) for critical use exemptions and at § 82.4 (w) for emergency use exemptions. Beyond reserving these sections, EPA is not amending Part 82 by adding the processes for these exemptions at this time. Because we are not adding the processes at this time, we are not requesting comment on these exemptions at this time. EPA intends to publish a proposal for a submittal process, timing, and the procedures by which the U.S. government would make determinations for both exemptions in a future notice and comment rulemaking. Any unsolicited comments addressing the critical and emergency use exemptions will be addressed in relation to that future proposal.

b. What Is the Montreal Protocol Authority for Granting a Critical Use Exemption After the Phaseout?

In recognition that substitutes may not be available by 2005 for certain important methyl bromide uses, the Protocol provides an exemption in Article 2H, paragraph 5 for critical uses.

> Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero * * * This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.

While not specifying which uses might be ''critical,'' the Parties established criteria and some procedural steps for determining whether a specific use should be approved as critical at their Ninth Meeting (1997) in Decision IX/6. Apart from quantities used for quarantine or preshipment, and limited production for export to Article 5 countries, production and import of methyl bromide are only permitted past January 1, 2005 for those uses approved under Decisions IX/6 or IX/7.

In Decision IX/6, the Parties agreed as follows:

> (a) That a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that:
>
> (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and
>
> (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination * * *

Under paragraph 1(a), a Party nominating a specific use as being critical in its submission to the Protocol Parties must determine both that the unavailability of methyl bromide for this use would result in a significant market disruption and that there is a lack of acceptable and suitable alternatives. The Decision goes on to specify:

> (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:
>
> (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;
>
> (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;
>
> (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes * * * Non-Article 5 Parties must demonstrate that research programmes are in

[3] The formula for ''consumption'' is production + import − export. Because ''consumption'' encompasses ''production and import'', phasing out ''production and import'', in effect, also phases out consumption.

place to develop and deploy alternatives and substitutes * * *

The above paragraph of Decision IX/6 requires that a nomination further demonstrate to the Parties that the use of methyl bromide is minimized, that methyl bromide is not available through means other than production, and that alternatives are actively being pursued.

Paragraph (2) of Decision IX/6 requests the Technology and Economic Assessment Panel (TEAP) to evaluate the nominations according to the criteria in paragraphs 1(a)(ii) and 1(b). In essence, 1(a)(ii) and 1(b) direct TEAP to evaluate a proposed exemption according to:

(1) The availability of, as well as efforts to find, receive approval of, and market, alternatives for that particular use;

(2) Efforts to minimize use and emissions; and,

(3) The potential for meeting that need through banked or recycled methyl bromide.

c. What Is the CAA Legal Authority for Implementing the Critical Use Exemption?

Any critical use exemption must comply with the provisions of the CAA. Section 604(d)(6), added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law No. 105–277; October 21, 1998), states that:

> To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or institutions of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

With this most recent amendment to the CAA, Congress authorizes EPA to provide critical use exemptions. Furthermore, by requiring consistency with the Protocol, Congress obligates EPA to provide these exemptions only according to the timeframe specified in the Protocol (after January 1, 2005) and only (as specified in Article 2H, Paragraph 5) ''to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.''

d. How Will the U.S. Incorporate the Critical Use Exemption?

Consistent with the Montreal Protocol and Congress's recent addition to the CAA, the critical use exemption cannot apply until the complete phaseout, in 2005. The Protocol, as explained in ''a'' and ''b'' of this section, specifies in Paragraph 5 of Article 2H that, ''commencing on 1 January 2005 * * * [the phaseout] will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.'' The CAA, as described in ''b'' above, requires this schedule by providing the critical use exemption ''to the extent consistent with the Montreal Protocol.'' Thus, we are not delineating specifics related to this exemption in today's action. However, we intend to permit limited continued production for critical uses agreed to by the Parties to the Protocol for the period after January 2005.

We are reserving a section of the regulation for a future rulemaking to incorporate the critical use provisions from the Protocol and the CAA into our domestic allowance program. We plan to propose in a future rulemaking the creation of a new class of exemptions that may be referred to as ''critical use allowances.'' In that future rulemaking, we plan to propose details related to critical use exemption procedures and criteria, as well as request nominations for critical uses needed beyond 2005. The details of the critical use exemption have yet to be defined. We plan to hold stakeholder meetings in the near future to solicit ideas in developing a proposal for the implementation of a streamlined critical use exemption process in accordance with U.S. obligations under the Protocol and consistent with CAA requirements.

The economic and geographical issues that are unique to methyl bromide and its applications will be considered as we develop the details of the exemption program, including the submittal process, timing, and the procedures we will use in making determinations for this exemption. The process for obtaining a critical use exemption could resemble the process used for essential use exemptions for other Class I ozone-depleting substances like CFCs (Decision IV/25; 58 FR 6786, 29410, 53722). However, because of the economic and geographical issues unique to methyl bromide and its applications, it is possible that the critical use exemption process could also vary significantly from the essential use process.

e. What Is the Protocol Authority for Granting an Emergency Use Exemption?

As discussed above, the Parties also established the emergency use exemption for methyl bromide at their Ninth Meeting (Decision IX/7). Decision IX/7 allows the Parties to consume, * * * in response to an emergency event * * *, quantities not exceeding 20 tonnes of methyl bromide. The Secretariat and the Technology and Economic Assessment Panel will evaluate the use according to the 'critical methyl bromide use' criteria and present this information to the next meeting of the Parties for review and appropriate guidance on future such emergencies, including whether or not the figure of 20 tonnes is appropriate.

As can be seen from the language of Decision IX/7, the emergency use exemption is essentially an abbreviated critical use process allowing limited consumption of methyl bromide in response to an emergency. Because Article 2H does not contemplate consumption for critical uses prior to the complete phaseout in 2005, neither the critical use exemption nor its abbreviated form—the emergency use exemption—will be available until that date. Each emergency use will be evaluated by the Parties after its occurrence. EPA plans to provide details of an emergency use process in the same future proposal addressing the complete critical use process.

f. What Is the CAA Legal Authority for Implementing the Emergency Use Exemption?

While this exemption is not explicitly included as a separate item in the most recent Congressional changes to the CAA [Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277)], we believe that Congress' grant of authority in 604(d)(6) to exempt critical uses is sufficiently broad to cover not only the full critical use process but also the abbreviated form of this process, that is, the emergency use exemption.

g. How Will Decision IX/7 Affect Emergency Agricultural Uses in the U.S.?

Because the emergency use exemption will not be available until the complete phaseout (2005), we are not delineating specifics related to this exemption in today's action. However, we intend to permit limited production for emergency uses beginning in 2005. To incorporate the Protocol's emergency use Decision into our domestic allowance program, we may create, through a future rulemaking, a new class of exemptions to be referred to as ''emergency use allowances.'' In a future rulemaking, we plan to propose criteria and processes for exempting and using methyl bromide for an emergency event after January 1, 2005.

VII. Will Production Allowances be Available for Export to Developing Countries (§ 82.9)?

a. What Does the Protocol Say About 2001 Production Allowances for Export to Developing Countries?

The Parties believed that during the phasedown period, existing production facilities in industrialized countries should be able to supply developing countries (Parties operating under Article 5, paragraph 1, of the Protocol), thereby decreasing incentives for construction of new plants in those countries. Thus, the Protocol allows industrialized countries to produce limited, additional methyl bromide explicitly for export to developing countries during the phasedown in the industrialized countries. Article 2H, paragraph 5, of the Protocol states that,

* * * in order to satisfy the basic domestic needs of the Parties operating under Paragraph 1 of Article 5, [each Party's] calculated level of production may, until 1 January 2002 exceed [the relevant] limit by up to fifteen percent of its calculated level of production in 1991; * * *

The Beijing adjustments that added the above text entered into force on July 28, 2000.

b. How Did the U.S. Provide for Article 5 Allowances in the CAA?

Domestically, the Protocol provisions that allow limited production for export to Article 5 countries are reflected in section 604 of the CAA. The current phaseout requirements for methyl bromide appear in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law No. 105–277). In adding section 604(h), Congress also added a provision to 604(e) that specifically addresses production of methyl bromide for export to developing countries. This provision, section 604(e)(3), states that:

* * * the Administrator may, consistent with the Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are Parties to the Copenhagen Amendments to the Montreal Protocol.

Thus, the CAA directs EPA to be consistent with the Protocol in creating Article 5 allowances. As stated in ''a'' of this section, Article 2H, paragraph 5 of the Protocol allows, prior to January 1, 2002, production for export to Article 5 countries of up to 15 percent of the 1991 baseline. Therefore, today's amendments to the phaseout regulations reflect this Article 5 allowance for 2001.

c. What Production for Export to Article 5 Countries Will Be Allowed Past 2001?

As explained above, the CAA specifies that we provide the allowances for export to Article 5 countries in accordance with the Protocol. The Protocol allows industrialized countries to produce limited, additional methyl bromide explicitly for export to developing countries during and after the phasedown in the industrialized countries.

Article 2H, paragraph 5 of the Protocol states that from January 1, 2002 until January 1, 2005,

* * *[the calculated level of production] may exceed [the relevant] limit by a quantity equal to the annual average of its production of the controlled substance in Annex E for basic domestic needs for the period 1994 to 1998 inclusive.

Furthermore, the Protocol provides a more relaxed methyl bromide phaseout schedule for developing countries. Article 5 countries are obligated to phase out methyl bromide completely by January 1, 2015. The difference between the methyl bromide phasedown schedule in developing and industrialized countries creates the possibility for developing countries to import methyl bromide beyond the phaseout in industrialized countries (*i.e.*, past January 1, 2005). Thus, an allowance for export is needed past the U.S. domestic phaseout. Article 2H, paragraph 5 bis., provides that:

* * * commencing on 1 January 2005 and in each twelve-month period thereafter, [each Party's] calculated level of production of [methyl bromide] for the basic domestic needs of the Parties operating under paragraph 1 of Article 5 does not exceed eighty per cent of the annual average of its production of the substance for basic domestic needs for the period 1995 to 1998 inclusive.

The Protocol goes on to specify in Article 2H, paragraph 5 ter. that:

* * * commencing on 1 January 2015 and in each twelve-month period thereafter, [each Party's] calculated level of production of [methyl bromide] for the basic domestic needs of the Parties operating under paragraph 1 of Article 5 does not exceed zero.

The 1995 to 1998 average production for export to Article 5 countries was specified as the post-2001 baseline for production for export to Article 5 countries at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing. Because the Adjustments made in Beijing replace the 1991 production baseline with this new baseline, we will be granting allowances to produce methyl bromide for export to Article 5 countries beyond 2001 in a rulemaking to be completed before 2002. We need time to ensure the technical accuracy of the Article 5 allowance amounts for 2002 and beyond. We plan to, as soon as possible, promulgate another rule laying out the allowances for export to Article 5 countries past 2001 according to the CAA and the Protocol. From 2002 to 2005, we plan to grant the average of the 1995 through 1998 production for export to Article 5 countries. From 2005 to 2015, when the developing countries phase out methyl bromide (except for previously discussed exemptions), we plan to grant the current industrialized countries' production allowance for export to Article 5 countries of 80% of the 1995 through 1998 average of production for export to Article 5 countries.

Because we are not adding the Article 5 Allowances past 2001 at this time, we are not requesting comment on these allowances at this time. EPA intends to publish a proposal for these allowances in a future notice and comment rulemaking in 2001. Any unsolicited comments addressing Article 5 Allowances past 2001 will be addressed in relation to that future proposal.

VIII. How Do Today's Changes Affect the Economic Impact of the Phaseout?

In preparing the final rule that established the original 2001 phaseout date for methyl bromide (58 FR 69235), we conducted a Cost Effectiveness Analysis, dated September 30, 1993, under the title, ''Part 2, The Cost and Cost-Effectiveness of the Proposed Phaseout of Methyl Bromide'' (Docket A–92–13, Document Number IV–A–23). In preparing for the initial interim 25% reduction, we conducted an addendum to the 1993 analysis (Docket A–92–13, Document Number II–A–41). For today's interim and final reductions in methyl bromide production and import, we conducted a Regulatory Impact Analysis as an update to the 1993 analysis, and in addition to the 1999 addendum. This RIA was not used as a basis for deciding on phasedown and phaseout percentages and dates. Rather, the dates are dictated by the Montreal Protocol and the Clean Air Act Amendments of 1998. The original (1993) annualized cost estimate for the 2001 phaseout, adjusted to 1998 dollars, is $159 million. The results of the updated analysis, which will be available in conjunction with our forthcoming proposed rule addressing quarantine and preshipment, are expected to indicate that extending the phaseout deadline will result in cost savings, when compared to the cost estimate for the 2001 phaseout.

IX. What Are the Supporting Analyses?

a. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why 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.

Today's rule contains federal mandates (under the regulatory provisions of the Title II of the UMRA) for the private sector. However, the rule implements mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any policy discretion by EPA. In particular, this rule implements the directive in section 604(h) of the CAA to promulgate a methyl bromide phaseout schedule that is in accordance with the schedule under the Montreal Protocol. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because this rule extends the current phaseout, the rule reduces costs. Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

b. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant impact on a substantial number of small entities.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as:

(1) A small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Type of enterprise	SIC code/ division	Size stand-ard
Industrial Or-ganic Chemi-cals.	2813	1,000
Wholesale Trade	Division F	100

(2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's direct final rule will not impose any requirements on small entities, as it regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances.

c. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this an ''economically significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

d. Applicability of Executive Order 13045—Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This rule is not subject to Executive Order 13045 because it implements a Congressional directive to phase out production and import of methyl bromide in accordance with the schedule under the Protocol.

e. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.17).

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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

f. 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 rule does not have federalism implications. It 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 regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It implements mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any policy discretion by EPA. Thus, Executive Order 13132 does not apply to this rule.

g. 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 the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities.''

Today's rule implements requirements specifically set forth by Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

h. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

i. 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 rule is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 29, 2001.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl bromide, Ozone layer.

Dated: November 17, 2000.

Carol M. Browner,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by:

a. Revising the first sentence of paragraph (a),

b. Revising the first sentence of paragraph (b),

c. Revising the first sentence of paragraph (c),

d. Revising the first sentence of paragraph (d),

e. Removing the second sentence of paragraph (h) and adding two sentences in its place,

f. Revising the first 2 sentences of paragraph (k),

g. Adding and reserving paragraphs (v) and (w).

The revisions and additions read as follows:

§ 82.4 Prohibitions.

(a) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, the amount of unexpended Article 5 allowances as allocated under § 82.9, or the amount of conferred unexpended destruction and transformation credits as obtained under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. * * *

(c) Prior to January 1, 1996, for all Groups of class I controlled substances and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substances, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section or the amount of unexpended destruction and transformation credits obtained under § 82.9, held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(h) * * * In addition to total production permitted under paragraph (f) of this section, effective January 1, 2001, for class I, Group VI controlled substances, a person may, at any time, until January 1, 2002, produce 15 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. No person may, at any time, in any control period until January 1, 2000, produce class I, Group I, Group II, Group III, Group IV, and Group V controlled substances, and no person may, at any time until January 1, 2002, produce class I Group VI controlled substances for export to Article 5 countries in excess of the Article 5 allowances allocated under § 82.9(a). * * *

* * * * *

(k) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels and used controlled substances. * * *

* * * * *

(v) Critical use exemption. [Reserved]

(w) Emergency use exemption. [Reserved]

3. Section 82.7 is revised to read as follows:

§ 82.7 Grant and phase reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under § 82.5 and 82.6 of this subpart.

Control period	Class I substances in groups I and III, (In percent)	Class I substances in group II, (In percent)	Class I substances in group IV (In percent)	Class I substances in group V (In percent)	Class I substances in group VI (In percent)	Class I substances in group VII (In percent)
1994	25	0	50	50	100	100
1995	25	0	15	30	100	100
1996	0	0	0	0	100	0
1997	0	0	0	0	100	0
1998	0	0	0	0	100	0
1999	0	0	0	0	75	0
2000	0	0	0	0	75	0
2001	.....	.....	.....	.....	50	.....
2002	.....	.....	.....	.....	50	.....
2003	.....	.....	.....	.....	30	.....
2004	.....	.....	.....	.....	30	.....

Control period	Class I substances in groups I and III, (In percent)	Class I substances in group II, (In percent)	Class I substances in group IV (In percent)	Class I substances in group V (In percent)	Class I substances in group VI (In percent)	Class I substances in group VII (In percent)
2005					0	

4. Section 82.9 is amended by:

a. Revising paragraph (a)(2),

b. Revising the first sentence of paragraph (e) introductory text,

c. Revising paragraph (e)(1) introductory text,

d. Revising the first sentence of paragraph (e)(2),

e. Revising the first sentence of paragraph (e)(3).

The revisions read as follows:

§ 82.9 Availability of allowances in addition to baseline production allowances.

(a) * * *

(2) 15 percent of their baseline production allowances for class I, Group VI controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 2002;

* * * * *

(e) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005 for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States, or transformed or destroyed by a person of another Party, in the cases where production allowances were expended to produce such substance in the U.S. in accordance with the provisions of this paragraph. * * *

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, a person must submit a request for production allowances that includes the following:

* * * * *

(2) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. * * *

(3) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, if the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator will issue a notice disallowing the request for additional production allowances.

* * *

* * * * *

5. Section 82.10 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, the first sentence of (b), and the first sentence of paragraph (c) introductory text as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of class I controlled substances (other than used controlled substances or transhipments) that the person has exported from the United States and its territories to a Party (as listed in appendix C to this subpart).

(1) Until January 1, 1996 for all class I controlled substances, except Group VI, and until January 1, 2005, for class I, Group VI, to receive consumption allowances in addition to baseline consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

* * * * *

(b) Until January 1, 1996, a person may obtain consumption allowances for a class I controlled substance (and until January 1, 2005 for class I, Group VI) equal to the amount of a controlled substance either produced in, or imported into, the United States that was transformed or destroyed in the case where consumption allowances were expended to produce or import such substance in accordance with the provisions of this paragraph. * * *

(c) A company may also increase its consumption allowances by receiving production from another Party to the Protocol for class I, Group I through Group V and Group VII controlled substances until January 1, 1996 and for class I, Group VI controlled substances until January 1, 2005. * * *

* * * * *

6. Section 82.12 is amended by revising paragraphs (a)(1) introductory text and (b)(1) as follows:

§ 82.12 Transfers.

(a) * * *

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, and person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances, as follows:

* * * * *

(b) * * *

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2005 for Group VI, any person (''convertor'') may convert consumption allowances or production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group as the first as listed in appendix A of this subpart, following the procedures described in paragraph (b)(4) of this section.

* * * * *

[FR Doc. 00–30109 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6907–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on January 29, 2001 unless EPA receives adverse written comment by December 28, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at the following addresses: The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154 East, Atlanta Georgia 30334–4910, and from 8:30 a.m. to 3:45 p.m., EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in this Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective

January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), and October 14, 1999, effective December 13, 1999 (64 FR 55629).

G. What Changes are We Authorizing with Today's Action?

On April 28, 2000, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 1997 through June 30, 1998, otherwise known as HSWA Cluster VIII. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of Federal requirement	Federal Register	Analogous State authority [1]
Checklist 160, Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment.	7/14/97 (62 FR 37699)	Georgia Hazardous Waste Management, Official Code of Georgia Annotated (GHWMA, O.C.G.A.) Section 12–8–62(14), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65(a) (16), and (21); Rule 391–3–11–.16.
Checklist 161, Emergency Revision of the Carbamate Land Disposal Restrictions.	8/28/97 (62 FR 45572)	GHWMA, O.C.G.A. 12–8–62(14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65(a) (16) and (21); Rule 391–3–11–.16.
Checklist 162, Clarification of Standards for Hazardous Waste LDR Treatment Variances.	12/5/97 (62 FR 64509)	GHWMA, O.C.G.A. 12–8–62 (14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65 (a) (14), (16), and (21); Rule 391–3–11–.16.
Checklist 163, Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment.	12/8/97 (62 FR 64656–64671)	GHWMA, O.C.G.A. 12–8–64 (1) (A), (B), (C), (D), (E), and (F), 12–8–65(a) (3), (16), and (21), 12–8–66; Rules 391–3–11.01(2), 391–3–11.10(1), 391–3–11.11(3)(h)
Checklist 164, Kraft Mill Steam Stripper Condensate Exclusion.	4/15/98 (63 FR 18635–18751)	GHWMA, O.C.G.A. 12–8–62 (10) and (20), 12–8–64 (1) (D) and (J), 12–8–65 (a) (16) and (21); Rule 391–3–11–.07(1).
Checklist 166, Recycled Used Oil Management Standards, Technical Correction and Clarification.	5/6/98 (63 FR 24968–24969) 7/14/98 (63 FR 37781–37782)	GHWMA, O.C.G.A. 12–8–62(11), (12), (13), (21), and (22), 12–8–64(1) (A), (B), (C), (D), (E), (F), (I), and (L), 12–8–65(a) (3), (16), and (21), 12–8–66; Rules 391–3–11.07(1), 391–3–11–.17.
Checklist 167A, Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing.	5/26/98 (63 FR 28636–28753) 6/8/98 (63 FR 31266)	GHWMA, O.C.G.A. 12–8–62 (14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65 (a) (16), and (21); Rule 391–3–11–.16.
Checklist 167B, Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions		GHWMA, O.C.G.A. 12–8–62 (14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65 (a) (16), and (21); Rule 391–3–11–.16.
Checklist 167C, Land Disposal Restrictions Phase IV—Corrections		GHWMA O.C.G.A. 12–8–62 (14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65 (a) (14), (16) and (21); Rule 391–3–11–.16.
Checklist 167E, Bevill Exclusion Revisions and Clarifications		GHWMA O.C.G.A. 12–8–62(14) and (23), 12–8–64 (1) (A), (B), (D), (F), and (I), 12–8–65 (a) (16) and (21); Rule 391–3–11–.16.
Checklist 167F, Exclusion of Recycled Wood Preserving Wastewaters		GHWMA, O.C.G.A. 12–8–62(10) and (20), 12–8–64 (1) (D) and (J), 12–8–65 (a) (16) and (21); Rule 391–3–11–.07(1).
		GHWMA, O.C.G.A. 12–8–62(10) and (20), 12–8–64 (1) (D), (J), and (L), 12–8–65 (a) (16) and (21); Rule 391–3–11–.07(1).
Checklist 168, Hazardous Waste Combustors: Revised Standards.	6/19/98 (63 FR 33823–33829)	GHWMA, O.C.G.A. 12–8–62 (10) and (20), 12–8–64 (1) (D), (J), and (L), 12–8–65 (a) (16) and (21); Rule 391–3–11–.07(1).
		GHWMA O.C.G.A. 12–8–64 (1) (A), (B), (C), (D), (E), (F), and (I), 12–8–65(a) (3), (16), and (21); Rule 391–3–11–.11(7)(d) and (3)(f).

[1] The Georgia provisions are from the Georgia Hazardous Waste Management Regulations effective December 23, 1998.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes

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 action 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 action 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 authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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 F.R. 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 F.R. 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.*).

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 document 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 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). This action will be effective January 29, 2001.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 26, 2000.

A. Stanley Meiburg,

Regional Administrator, Region 4.

[FR Doc. 00–30006 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 00–274]

Competitive Bidding Procedures; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, August 29, 2000, (65 FR 52323). The regulations related to the competitive bidding rules for all auctionable services in § 1.2110 of the Commission's rules.

DATES: Effective November 28, 2000.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2000 (65 FR 52323), the Commission published a summary of its Order on Reconsideration of the Third Report and Order, Fifth Report and Order *(Order on Reconsideration, Fifth Report and Order)* in WT Docket No. 97–82. That document clarified and amended the Commission's competitive bidding rules in an ongoing effort to establish a uniform and streamlined set of general competitive bidding rules for all auctionable services and to reduce the burden on both the Commission and the public of conducting service-specific auction rule makings.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

Correction to CFR

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.2112 is amended by revising paragraph (a)(6) to read as follows:

§ 1.2112 Ownership disclosure requirements for short- and long-form applications.

(a) * * *

(6) Any FCC-regulated entity or applicant for an FCC license, in which the applicant or any of the parties identified in paragraphs (a)(1) through (5) of this section, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant (e.g., Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant);

* * * * *

Correction to Preamble

In the preamble to the same rule [FR Doc. 00–21982 published on August 29,

2000 (65 FR 52323)] make the following correction:

On page 52334, column 2, and starting on line 51 correct the last sentence in paragraph 66 to read as follows:

Non-licensees, however, are precluded from being assignees or transferees within the first five years of license grant unless they qualify as entrepreneurs based on the attribution rules in effect at the time of filing an application for assignment or transfer.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–30232 Filed 11–27–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112000B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 8, 2000. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 8, 2000, until noon, local time, on February 1, 2001.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305; fax: 727-570-5583; e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and approved and implemented by NMFS, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2000. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the annual commercial quota of 4.65 million lb (2.11 million kg) for red snapper will be reached when the fishery closes at noon on December 8, 2000. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2001. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 8, 2000.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limits have not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 8, 2000, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: November 21, 2000.

Bruce C. Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

FR Doc. 00–30311 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 229
Tuesday, November 28, 2000

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309, 310, 311, 314, 318, 320, 325, 327, 331, 381, 416, and 417

[Docket No. 00–043N]

Residue Control in a HACCP Environment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Conceptual framework for program changes; notice of availability of documents and public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to advise the public of its intent to adapt its approach to the control of chemical residues in or on meat and poultry products in light of the implementation of the regulations in the Agency's Pathogen Reduction-Hazard Analysis and Critical Control Point Systems (PR/HACCP) final rule. The Agency is providing an opportunity for public participation in this effort. FSIS hopes that a wide variety of interested members of the public will consider how HACCP should affect the Agency's approach to preventing illegal chemical residues in or on FSIS-regulated products and will provide comments for improving consumer protection through a well-integrated, federal farm-to-table food safety strategy. Therefore, FSIS is providing a conceptual framework that sets out issues that the Agency wants to consider during its program review and in making decisions about how it should modify its approach to the control of chemical residues. FSIS is also making relevant materials available to the public. The Agency is soliciting written comments on the issues raised in this document, including those raised in the materials it references, and is seeking comments that contain additional information or raise additional issues. The Agency will hold a public meeting to discuss the issues presented in this document and the issues raised by the comments submitted.

DATES: The public meeting will be held on December 11, 2000, from 9 a.m. to 5 p.m. Members of the public who wish to provide information or raise issues for discussion at the meeting should submit written comments before December 4, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 00–43N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted and documents referred to below will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday. The public meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by, among other things, preventing the distribution of adulterated products of livestock and poultry. Under the FMIA and the PPIA, it is illegal to sell or transport, offer for sale or transportation, or receive for transportation, in commerce, products that are capable of use as human food that are adulterated (21 U.S.C. 458(a)(2)(A) and 610(c)(1)).

Both the FMIA and the PPIA include requirements for federal inspection, and they prohibit selling or transporting, offering for sale or transportation, or receiving for transportation, in commerce, products required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a)(2)(B) and 610(c)(2)). Intrastate operations and transactions are effectively subject to the same requirements and prohibitions, pursuant to a State inspection program or the designation of the State for federal inspection (21 U.S.C. 454(c)(1) and 661(c)(1)).

FSIS laid the foundation for modernizing its system of food safety regulation in July 1996, when it issued the PR/HACCP final rule (61 FR 38806). The Agency's regulations (9 CFR chapter III) now require federally inspected establishments to take preventive and corrective measures at each stage of the food production process where food safety hazards can occur. The amended regulations also establish an approach to food safety regulation that relies less on after-the-fact detection of problems and more on verification of the effectiveness of an establishment's process controls that are designed to ensure food safety. In particular, the regulations on HACCP systems (part 417) require that an establishment-specific hazard analysis consider food safety hazards that can occur before, during, or after entry into the establishment, and they require the implementation of a HACCP plan that, for each production process, addresses the food safety hazard or hazards that are reasonably likely to occur (§ 417.2(a)(1), (b)(1), and (c)).

Under the HACCP system regulations, a food safety hazard is any biological, chemical, or physical property that may cause a food to be unsafe for human consumption (§ 417.1). The possible sources from which food safety hazards might be expected to arise specifically include chemical contamination, pesticides, and drug residues (§ 417.2(a)(3)(iii), (a)(3)(iv), and (a)(3)(v)).

The standard for determining whether a food safety hazard is reasonably likely to occur in the production process is if *either* (1) the hazard historically has occurred, *or* (2) there is a reasonable possibility that the hazard will occur in the particular type of product being produced in the absence of preventive measures to control it (§ 417.2(a)(1)). For each hazard that is reasonably likely to occur, a HACCP plan must identify the preventive measures that the establishment will apply to control the hazard. These include critical control points (CCPs), the critical limits to be met at each CCP, procedures for (and documentation of) the monitoring of CCPs, corrective actions to be followed in response to any deviation from a

critical limit at a CCP, and verification procedures (§§ 417.2(c), 417.3(a), and 417.4(a)).

A HACCP plan's CCPs are the points, steps, and procedures in a food process at which the establishment can apply control and, as a result, prevent, eliminate, or reduce to acceptable levels food safety hazards that could be introduced in the establishment and food safety hazards introduced outside the establishment (including hazards that occur before, during, and after entry into the establishment) (§§ 417.1 and 417.2(c)(2)). A plan's critical limits must be designed, at a minimum, to ensure that applicable targets or performance standards established by FSIS, and any other requirement in the Agency's regulations pertaining to the specific process or product, are met (§ 417.2(c)(3)).

FSIS phased in the applicability of part 417 requirements over a two year period, based on establishment size, beginning with large establishments (those with 500 or more employees) on January 26, 1998, and ending with very small establishments (those with fewer than 10 employees or annual sales of less than $2.5 million) on January 25, 2000. The Agency is evaluating the results of HACCP implementation to date and is considering what further steps to take to increase the effectiveness of the HACCP approach to food safety—including steps that would better ensure the adequacy of industry members' HACCP plans and advance the ongoing transformation of the Agency's regulatory system (see '' 417.8). One focus of the Agency during this process will be its consideration of what approach should be taken to control chemical residues in light of the PR/HACCP final rule.

Residue Control

FSIS-regulated products may be adulterated because they bear or contain residues of drugs, pesticides, and other chemicals used in animal production or present in the animals' environment (see 21 U.S.C. 453(g)(1), (g)(2), and (g)(3) and 601(m)(1), (m)(2), and (m)(3)). FSIS has not yet modified its regulatory requirements and program activities dealing with residues to reflect the implementation of HACCP plans at official establishments. Some companies have had difficulty understanding their responsibilities under the HACCP system regulations and integrating their residue control responsibilities with other regulatory requirements.

Since the 1960's, the public and private sectors have tried to meet the challenges presented by various types of adulteration that organoleptic examination generally cannot detect. Residue control is a particularly appropriate candidate for an improved approach that involves a well-integrated and seamless, prevention-oriented farm-to-table strategy.

At the federal regulatory level, efforts to prevent residue-related food safety problems principally involve, in addition to FSIS, the Food and Drug Administration (FDA), acting under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 321 *et seq.*), and the Environmental Protection Agency (EPA), acting under the FFDCA, the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*), and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). In their premarket approval programs, FDA and EPA consider what, if any, levels of drug and pesticide residues should be viewed as safe, and they evaluate potential exposure to toxic substances that may contaminate food. FDA also has federal regulatory responsibility for animal feeds and food producing animals.

At slaughter, FSIS looks for indications of illegal chemical use or exposure and collects carcass samples for residue analysis. The analytical components of the Agency's residue control activities are collectively known as the ''National Residue Program'' (NRP). The most recent NRP reports are the ''1999 FSIS National Residue Program'' and the ''Domestic Residue Data Book National Residue Program 1998'' (referred to informally as the ''Blue Book'' and the ''Red Book'', respectively.)

Initiated more than 30 years ago, the NRP has generally been a success. It has been instrumental in reducing the incidence of such residue violations as sulfamethazine in market hogs and in improving analytical capabilities for detecting chemical residues, including significantly increasing the number of compounds for which analyses can be performed. Additionally, FSIS has been instrumental in the development of screening tests that make more efficient use of resources and that facilitate residue detection. Other improvements include the development of sophisticated information exchange systems that aid communication both within the public sector and with interested private sector parties, and the development of collaborative educational efforts with producers that are supported by other USDA agencies. In recent years, FSIS' Animal Production Food Safety Staff has worked with States, producer groups, and others to develop and enhance producers' residue avoidance activities and to help ensure that only nonviolative animals are presented for slaughter.

FSIS regulations directed at residue control and the Agency's implementing directives have grown more pointed during the past 30 years. In general, the regulations have become more detailed, have reflected a growing dependence on residue testing as the preferred means of control, and have increased FSIS' responsibility for this control function.[1] At the same time, communication and coordination among the agencies involved in residue control have improved, with multiple interagency committees and contacts.[2]

Despite these arrangements, more testing, and more government control, the outcome has not been optimal. Significant residue control issues have persisted. For example, certain market classes of domestic animals continue to have unacceptably high rates of residue violations.[3]

Discussed below is additional information about the basic design of the NRP, the relationship between residue control and HACCP, and practical considerations that need to be taken into account when reconsidering the approach to residue control. The document then discusses the resolution of a practical problem that arose during HACCP implementation that FSIS believes can serve as a first step in rethinking what ought to be the approach to residue control in a HACCP environment. Finally, other issues that FSIS believes need to be considered in order to determine what approach will best lead to optimal residue control in a HACCP environment are discussed.

FSIS hopes that a wide variety of interested members of the public will consider how developments described in this document should affect the Agency's approach to preventing illegal chemical residues in or on FSIS-regulated products and the approach to providing improved consumer protection through a well-integrated, federal farm-to-table food safety strategy. The Agency is soliciting written comments, including the submission of additional information, and it will hold a public meeting to discuss broad policy and program

[2] Reference 1 is a list of FSIS regulations, directives, and notices.

[1] Reference 2 describes the interagency infrastructure.

[3] NRP results indicate that, over time, the majority of residue violations have involved illegal levels of animal drugs, particularly sulfonamides and antibiotics, apparently due to the failure of producers of a relatively small percentage of livestock and poultry to follow prescribed withdrawal times—that is, to use these drugs in accordance with the FDA regulations.

concerns, including the issues raised in this document and in the comments submitted.

FSIS intends to organize the public meeting so that a number of groups that include a variety of constituents consider one or more of the issues identified in this document. The materials referenced in this document (see footnotes) are available in the Docket Clerk's office, and they also will be available at the meeting. A variety of people with knowledge and experience about the particular topics to be considered will facilitate the groups. At the end of the day, the facilitator will report to the attendees at the general meeting on the comments of the participants in each group. This information will be considered in the development of policy and program activities for residue controls.

Basic Program Design

Although NRP testing is planned and conducted using several sampling schemes, there are essentially two broad purposes for all NRP residue sampling. They are:

(1) *Prevalence sampling:* sampling to estimate the prevalence of residues of certain chemical compounds in the tissues of specific market classes of livestock and birds after they have been inspected and passed at slaughter; and

(2) *Verification sampling:* sampling to determine whether one or more processes to control residues have been successful.

Prevalence sampling has encompassed national, annual testing of specific market class/compound pairs of livestock and birds (*e.g.,* market hogs/sulfonamides) to determine whether a compound is a problem in that market class of animals; regional, seasonal, or market class specific testing, often in response to suspected problems of a more limited nature; and special testing programs initiated to meet the concerns of non-USDA entities, often international groups or countries that receive meat or poultry products. Prevalence sampling programs generally occur at one of four levels: 460 samples/year; 300 samples/year; 230 samples/year; or 90 samples/year. The 300 samples/year scheme provides a 95 percent confidence level that a problem occurring in 1 percent of the market class will be detected. The assumption that a greater than 1 percent violation rate will be discovered 95 percent of the time rests on the premise that normal-appearing inspected and passed carcasses constitute a sufficiently homogeneous population that this size sample can provide a national picture.

Currently, verification sampling of domestic products occurs after there has been a violation detected in carcasses from a particular producer. Typically, in such a case, subsequent livestock from the same producer are subjected to verification sampling until findings demonstrate that the production problem has been corrected. Verification sampling can also be generated by inspector observations, either ante-mortem or post-mortem, that suggest that a violative residue may be present. Verification sampling is also done on imports. FSIS samples products shipped to the United States from countries whose inspection systems, including their residue control programs, have been determined by FSIS to be equivalent.

Relationship Between Residue Control and HACCP

The PR/HACCP final rule established various requirements for inspected facilities producing meat and poultry products. These requirements include the following: (1) That establishments develop, implement, maintain, and keep records of their standard operating procedures for sanitation (Sanitation SOPs) (part 416), (2) that slaughter establishments implement generic *E. coli* testing and record and analyze results as a means of verifying the effectiveness of their slaughter and sanitary dressing process in preventing and removing fecal contamination from carcasses (§§ 310.25(a) and 381.94(a)), and (3) that establishments develop and implement HACCP plans to prevent, eliminate, or reduce to an acceptable level the food safety hazards reasonably likely to occur in their meat and poultry product production processes (part 417).

These requirements were designed to improve the safety of meat and poultry products, thereby reducing the incidence of foodborne illness attributable to these products. These requirements also assist the Agency in meeting one of its other regulatory objectives: to separate and clarify the roles of the government inspection force and the regulated industry.

Sanitation SOP implementation was a vitally important first step in getting the inspection force out of the role of functioning as the quality control department for plants. Key features of part 417 requirements reinforced this objective: the requirement that establishments, not FSIS, conduct (or have conducted for them) a hazard analysis (§ 417.2(a)(1)), the absence of HACCP plan approval by FSIS, the lack of FSIS-specified CCPs, the requirement that establishments validate the adequacy of their HACCP plans (§§ 417.4(a)), and the specification of consequences for incomplete corrective actions (§§ 417.2(e) and 417.6). All of these emphasize the distinctly different roles of FSIS and the establishment. These regulations underscore the companies' responsibility for producing meat and poultry products that are safe, and make clear that the Agency will hold them accountable for failing to do so.

The preamble to the PR/HACCP final rule discussed other important features of the Agency's overall food safety strategy, including regulatory reform, that provide flexibility and encourage company innovation and a farm-to-table approach that extends beyond the slaughter and processing establishments where most FSIS activities have occurred (61 FR 38810–11). FSIS is aware that the command-and-control nature of many of its regulations may discourage or impede establishments from taking full responsibility for the production of safe, complying products. In some cases, these regulations dictate to establishments exactly how something must be done; in other cases, FSIS carries out the activity itself and does not accept results from other sources. To address this problem, FSIS is converting many of its regulatory requirements into performance standards that allow an establishment to determine how it will meet a requirement, while still ensuring that appropriate requirements are in place.

FSIS is also aware that food safety problems may arise at many points along the farm-to-table continuum, not just in inspected establishments. Invisible hazards may be introduced at the production, distribution, or consumption levels. Therefore, FSIS has committed itself to working cooperatively with others concerned with food safety to encourage hazard prevention and control at every step in the process where a problem could arise.

As explained above, part 417 makes clear that violative residues present food safety hazards that may be reasonably likely to occur, and, therefore, slaughter establishments must consider the likelihood of their occurrence in developing HACCP plans. Nevertheless, some companies have found it difficult to integrate part 417 requirements with other FSIS regulations, including those that address residue control, even though § 417.2(c)(3) directly addresses the need to design critical limits to ensure that regulatory requirements are met. Part 417 also addresses FSIS activities with respect to establishments' HACCP systems and makes clear that FSIS will conduct activities to verify the

adequacy of HACCP plans, including records review, direct observation or measurement at a CCP, and sample collection and analysis (§ 417.8).

FSIS believes that it is appropriate now to rethink the current approach to residue control. On the one hand, industry must develop more effective systems of residue control. On the other, FSIS will need to shift its focus to verification testing to ensure residue requirements are met, so that only safe meat and poultry products reach the public. The Agency believes that this will result in a more effective residue control program and a more efficient use of its resources.

Full HACCP implementation gives FSIS and its constituents the opportunity to consider what approach is best to resolve problems of residue control by plants and what approach is best to accomplish effective integration of HACCP and residue control requirements.

Practical Considerations

(1) Historically, residue control programs have engendered controversies. There may be several underlying reasons, including persistent consumer concerns about the hazards they cannot see and cannot readily manage themselves. Obviously, chemical hazards in meat and poultry products cannot be managed by the individual consumer through usual techniques such as cooking or careful handling. The Food Marketing Institute (FMI) has conducted surveys of consumer attitudes and actions with regard to food safety. Even after many years of documented improvement of residue control in domestic meat and poultry products, and even with the increasing availability of data about the success of residue control, annual FMI surveys reveal that consumers continue to be concerned about residues.[4]

(2) Management of the hazards presented by chemical residues depends on persons with several different, but highly technical, scientific qualifications: toxicologists, chemists, epidemiologists, veterinarians, microbiologists, statisticians, and others who sometimes have not regarded open communication with the less expert public as a critical task. Additionally, in the United States and most countries, the scientists who are involved in the management of the hazards presented by chemical residues are not all employed by the same government agency and naturally develop different perspectives and concerns. Thus, a program that encompasses the kind of coordination and communication that is included in the United States' system is necessary. Communication about that system, and public involvement in shaping it, however, can be improved.

FSIS does not contemplate changes to residue control that would significantly alter the involvement in it of different types of highly skilled professionals or the close coordination that exists among food safety agencies in regard to it. FSIS does, however, contemplate changes that would make it even clearer that inspected establishments are responsible for analyzing the hazards from chemical residues and for taking measures to control those hazards that are reasonably likely to occur.

(3) The public health hazards presented by violative residues may be underestimated by the public whose attention is currently drawn to health hazards associated with pathogens in meat and poultry products. Two possible reasons for this may be a sense of security about the effectiveness of the current residue program and the usually longer-term consequences of residue control failures when compared to the immediate consequences of failures to control pathogenic organisms.

Although there is competition for finite resources, FSIS does not contemplate changes to its residue control program that would reduce its effectiveness or its importance. In fact, FSIS expects that the environment established by full HACCP implementation should lead to more efficient and effective residue control.

(4) Residue control activities have been the subject of well-publicized international controversies. The United States is a major exporter and importer of meat and poultry products. In addition, its agricultural production systems for meat and poultry products are substantially different from those of the many countries with which it trades. Determining whether such different systems impose equivalent requirements has not been an easy task.

FSIS does not contemplate changes that would undermine the exportation of meat and poultry products, but it is likely to ask that producers and processors take more responsibility for ensuring that residue violations are prevented. If producers and processors do so, FSIS will be able to assume a true verification role, as contemplated by HACCP.

Rethinking the Approach to Residue Control—Best Available Practices

FSIS believes that efforts to solve a practical problem that arose during HACCP implementation provide the initial steps for rethinking the approach to residue control in a HACCP environment. An establishment that slaughters principally cull dairy cows, a market class of livestock with an historically high incidence of drug residue violations, had not included any residue controls in its HACCP plan because it assumed that FSIS would continue to take the lead responsibility in this area. Findings of violative levels of drug residues in carcasses of animals slaughtered at the establishment resulted in the issuance of FSIS Noncompliance Records (NRs). (The NR, FSIS Form 5400.5–4, is the Agency's official record of noncompliance and serves as notification to an establishment of its failure to comply with one or more regulatory requirements. See FSIS Directive 5400.5.)

In response to this situation, a coalition of industry members and trade associations and other interested parties met with the Agency. They expressed a number of concerns. They were concerned about the high number of NRs issued at some establishments because of repeated violations in cull dairy cows. They also were concerned about the lack of consistency regarding the taking of screening samples for residues of certain antibiotics in similar types of establishments. They requested that the Agency clarify its instructions to its supervisory veterinary medical officers (SVMOs) regarding the taking of screening samples for residues of certain antibiotics. They also requested assistance in obtaining rapid laboratory results so that the appropriate disposition of carcasses could be determined quickly.

The coalition offered to share information that the large majority of establishments had that slaughter cull dairy cows, including the identification of suppliers of residue-violative animals, and notifications issued by a slaughtering establishment to such suppliers of a violative residue finding that might indicate that future purchases would be restricted. Coalition members suggested that, over time, such an approach might result in an actual decrease in violative residue findings in cull dairy cows.

Since the initial discussions, there have been several important developments:

—FSIS reviewed its instructions to SVMOs about the post-mortem observations that should trigger performance of a screening test for residues of certain antibiotics, and it found that there was a discrepancy between the Agency's training of

[4] Reference 3 is ''Trends in the United States: Consumer Attitudes and the Supermarket,'' 2000, Food Marketing Institute.

SVMOs and the instructions they received on the job for this matter. FSIS remedied this situation by issuing a new notice that is consistent with the training given to SVMOs.[5] The notice is expected to result in more screening tests being performed.

—FSIS determined that it could accomplish its laboratory confirmation analyses of screening positive results within a short timeframe.

—FSIS has told establishments that if their HACCP plans include residue controls that constitute the best available preventive practices for slaughter establishments, if they implement those controls effectively, and if they supply FSIS with information about violators, then the Agency will not treat violative residue findings by the establishment that are followed by appropriate corrective actions as noncompliance (see § 417.3(a)).

In response to these modest shifts in the Agency's approach, several establishments are exploring what might be considered to be the best preventive practices available to slaughterers. These include:

• ensuring that all animals brought into an establishment for slaughter are identified, so that they can be traced back to the producers of them, with receiving as a CCP;

• Notifying animal producers in writing of both violative and high, but not violative, residue findings, with such notification including a discussion of the issues involved, the company's future expectations, and an indication that repeat violators will not be future suppliers;

• Exploring the possibilities for the establishment of state-certified, and possibly USDA Cooperative State Research, Education, and Extension Service-verified, voluntary residue avoidance programs comparable to those developed by major producer trade organizations, so that slaughter establishments could add to their purchase specifications a requirement that suppliers participate in such programs and supply certifications to that effect; and

• Exploring the possibilities for live animal testing, so that slaughter establishments could have a rapid, convenient verification tool.

FSIS notes that there is a considerable methods development agenda that must be accomplished before the potential for live animal testing can be fully realized, but some existing efforts may aid this process. For example, the European Union (EU) expects testing at the producer level,[6] and thereby has created a demand for such methods.[7] In addition, there are efforts underway to facilitate the timely recognition and acceptance of test kit methods by providing independent, third-party scientific validation and accreditation of test kit performance claims.[8]

There may be models in Europe for other forms of public-private cooperation in residue control. In the Netherlands, there is a National Plan for Residues implemented by two ministries. Analyses for drug and pesticide residues in meat, poultry, and eggs are performed on a variety of sample types (muscle, fat, liver, kidney, and urine) taken from animals at slaughterhouses and on farms. There is also a private sector quality assurance group that provides support to producer groups that use its seal in marketing. The laboratory for the quality assurance group uses the same analytical methods as the government laboratories, and its results are considered to be equivalent to those of the government laboratories, including as a basis for action against producers of violative animals.

It is likely that additional models in use in other countries could provide concepts for the United States to consider as it reviews residue control in a HACCP environment.

Residue Control in a HACCP Environment—Issues To Be Considered

Almost fifteen years ago, the National Academy of Sciences (NAS) issued the first of several reports commissioned by FSIS that analyzed and commented upon the status and future of the nation's meat and poultry inspection system. The July 1985 report, titled ''Meat and Poultry Inspection System, The Scientific Basis of the Nation's Program,'' paid particular attention to the NRP because it was a principal means through which chemical hazards were addressed.[9] The report provides a useful framework for reconsidering the management of chemical hazards because it is HACCP oriented, and because most of the elements on which it focused still appear relevant today.

The areas addressed by NAS include the 10 discussed below. They are addressed here in order to raise issues that need consideration in the course of reconsidering the Agency's approach to residue control.

(1) Public Protection as the Primary Objective

The 1985 report determined that public protection was the primary objective of the NRP, and it remains the primary objective today. One issue that needs to be considered now is what full HACCP implementation adds to the potential for public health protection against chemical hazards. The Agency believes that it explicitly adds responsibility for establishments, through the hazard analysis, to determine whether chemical contamination, pesticides, or drug residues are food safety hazards reasonably likely to occur, and if so, it adds the responsibility for the establishment to control them through the HACCP system. Industry's enhanced role in this area will enable FSIS to optimize its effectiveness by allowing it to focus upon verifying that safe and wholesome product enters commerce.

If public protection is to be the primary focus of the Agency's residue control program, a question remains as to how the Agency should respond to requests by receiving countries to test for compounds that this country's risk analysis has not determined to be of public health significance. Where additional testing is requested, current FSIS policy is to not use federal funds for it; rather, the expense is borne by the exporter. For example, meat and poultry products exported from the United States to the EU are subjected to additional residue testing for some compounds that are banned in the EU but that may be used, in accordance with FDA regulations, in the United States. They also are tested for compounds that are approved for use in both the EU and the United States, but for which the EU mandates testing and for which the current U.S. program does not conduct tests. Only product eligible for export to the EU is being sampled for these compounds, and the analyses are performed in independent laboratories at industry expense.[10] In light of HACCP, an issue that needs to be considered is what other possible approaches might be developed for this matter.

(2) Focus on Prevention

The July 1985 NAS report indicated that the NRP was improved, but that it was nevertheless still deficient in its focus on prevention. An issue that needs to be examined in this area is what full implementation of HACCP has added to the capacity of the government

[5] Reference 4 is FSIS Notice 24–00.

[6] Reference 5 is Council Directive 96/23/EC.

[7] Reference 6 is a list of live animal test methods.

[8] Reference 7 is general information describing the AOAC Institute and its activities.

[9] Reference 8 is the chapter of the 1985 NAS report (Chapter 4) that addressed control of chemical hazards.

[10] Reference 9 is extra residue requirements for the EU.

to enhance residue control programs' focus on prevention.

As articulated in the preamble to the PR/HACCP final rule (61 FR 38807–08), HACCP is a science-based system of process control, designed to prevent food safety problems during the processing of food rather than to detect them after they have occurred. This raises the question of what producers and processors should be doing to identify and promote the acceptance of validated preventive measures.

In 1985, NAS suggested that the NRP was handicapped by the lack of traceback capabilities as well as by the low numbers of samples for residue testing. NAS also suggested that analysis of test results needed to produce a better characterization of the hazards, rather than just an enumeration of them across market class/compound dimensions. This raises the issue of how full HACCP implementation contributes to addressing these deficiencies.

(3) Clear Tolerance Levels Available on All Important Substances

In 1985, NAS identified this feature as improved, but still needing more progress. The process of setting tolerances has changed significantly since 1985. Tolerance setting is a function performed by FDA and EPA and, thus, minimally affected by FSIS program changes. Therefore, FSIS considers this issue to be minimally affected by full HACCP implementation.

(4) Sampling Scheme Adequate for Prevention

In 1985, NAS was critical of the NRP's monolithic sampling strategy. NAS suggested that the strategy ought to be revised to provide for more sampling, true probability sampling, and sampling designed to adequately characterize the nature and distribution of contaminants. NAS also suggested that random sampling schemes other than simple random sampling should be considered and that substantial technical advice from experts on sample surveys should be obtained.

There are certainly alternative sampling strategies that could be used in the residue control effort. FSIS might choose to sample certain historically problematic market classes intensively to define baseline conditions; from those baseline conditions, the Agency could consider promulgating performance standards for some market class/compound combinations that have been historically troublesome. Alternatively, FSIS could propose performance standards based on historical results from its own program.[11] In either case, establishments would be responsible for achieving these standards. FSIS would verify whether they were meeting the standards, and failure to meet the standards would have HACCP system consequences.

The Agency could also consider an approach that takes into account the amount of establishment sampling being done in determining the amount of FSIS testing that is appropriate. In fact, if FSIS verifies that an establishment has included residue control in its HACCP plan and is following corrective action procedures after any violative finding, with records available for Agency personnel to review, it would logically be expected that FSIS would consider limiting its residue testing.

Another alternative sampling strategy could involve adding marketbasket testing to FSIS activities and combining all FSIS results with any available test results from industry—animal producers as well as processors. Analysis of such a body of data might be possible and might provide a more comprehensive picture of residue control. Other countries may have experience with approaches that combine public and private testing.

Other issues that need to be considered here are what new approaches that combine producer, processor, and government activities into a multifaceted and more comprehensive residue control approach can and should be implemented now that HACCP has been fully implemented, and what needs to be done to accomplish this.

(5) Risk Assessment

NAS recommended that risk assessment play a prominent role in each of the first four areas discussed above. FSIS experience with risk assessment in the realm of microbial hazards is somewhat limited, although growing. FSIS has completed a risk assessment for *Salmonella enteritidis* in shell eggs and egg products, and it soon will complete a risk assessment for *E. coli* O157:H7 in ground beef and a *Listeria monocytogenes* risk ranking with FDA. Some people believe that risk assessment is less difficult in the realm of chemical hazards. The interagency Surveillance Advisory Team recently completed a significant change in the way compounds are selected for analysis any given year.[12]

FSIS believes the following issues need to be considered in this area: How should the Agency establish an agenda for risk assessment in the realm of controlling chemical hazards; how should the Agency allocate resources for its growing risk assessment needs; is the Animal and Plant Health Inspection Service's approach—which involves setting standards for risk assessments, and then permitting outside parties who meet those standards to perform risk assessments—useful; and what does full HACCP implementation bring in terms of these risk assessments?

(6) Adequate Analytical Tools and Testing Capacity

The Agency and its partners, such as FDA, have made great strides in the development of methods for residue testing and in the capability of laboratories to conduct analyses for residues (which even in 1985 were recognized as greatly improved). However, full implementation of HACCP may bring opportunities for greater progress, because it could create new markets for high quality laboratory work or new analytical methods.

Issues that need to be considered include the following: What are the needs for laboratory capacity, and what new analytical methods are needed; should the Agency consider recognizing test results for residues from State and private laboratories that have appropriate accreditation; and how can the Agency facilitate the development of new testing methods, particularly for live animals?

(7) A Trained Inspection Force

Issues that need to be considered in this area include the following: What training does the FSIS inspection force need regarding residue control in a full HACCP implementation situation; and what training do those in the regulated industries and others need regarding residue control in a full HACCP implementation situation?

(8) Close Links to Regulatory Enforcement

Much has changed since 1985, including a major FSIS reorganization and implementation of the PR/HACCP final rule. An issue that needs to be considered is what opportunities do the Agency's realignment and other activities in support of full HACCP implementation create for linkage between residue control and enforcement.

FSIS intends to proceed with its regulatory reform agenda and to apply the principles that guide it to complete its agenda, which includes residue control reform. (See the Agency's advance notice of proposed rulemaking,

[11] Reference 10 summarizes recent FSIS data that could serve as the basis for performance standards.

[12] Reference 11, sections 5 and 6 of the current Blue Book, describes the new approach.

''FSIS Agenda for Change: Regulatory Review'' (60 FR 67469, December 29, 1995), and Reference 1.) In this regard, issues that need to be considered include the following: What amendments to the regulations and other materials that cover residue control are needed; are additional efforts at interagency coordination regarding residue control necessary, and if so, what should they be?

FSIS has adopted the practice of supplementing its regulations with guidance material for industry. Issues that need to be considered include the following: What new or improved guidance materials are needed regarding residue control; what improvements in these materials can be made to ensure that industry members obtain the greatest benefit possible from them?

(9) Useful Information Systems

Implementation of HACCP has significantly modified most of the Agency's information system needs. Considering residue control alone, what are the critical information system needs in this area?

FSIS knows that EPA and FDA both need information regarding residues. The following issues need to be considered here: Who else needs information regarding residues, and who has the needed information; what are the constraints on sharing information regarding residues; how can obstacles to the sharing of information be overcome; and what resources are available for obtaining and sharing information?

(10) Priorities Are Set Through an Open Process

The NAS strongly suggested that an open process, readily available to a wide spectrum of constituents, be used to establish priorities for the control of chemical hazards in the meat and poultry supply. The upcoming public meeting is a first step in an effort to meet that goal. FSIS would like to know what other efforts might be useful in opening up the process.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this rule, FSIS will announce the publication of this document in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or will be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on November 22, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–30309 Filed 11–27–00; 8:45 am]

BILLING CODE 3410–DM–p

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–300 and –320 series airplanes. The existing AD requires repetitive ultrasonic inspections to detect cracking of certain lugs on the main landing gear (MLG), replacement of cracked lugs with new or serviceable parts, and a follow-on inspection; and provides for an optional terminating action for the repetitive inspections. This action would remove that terminating action and require new repetitive inspections of the rubber sealant to detect shearing, and corrective action, if necessary. This action also would require new one-time visual and fluorescent penetrant inspections to detect discrepancies of certain lugs and refurbishment of the MLG barrel and swing lever assemblies, which would terminate the requirements of this proposed AD. This action would also revise the applicability of the existing AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct discrepancies of the MLG barrel lower lugs, which could result in reduced structural integrity and possible collapse of the MLG.

DATES: Comments must be received by December 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, 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 action may be changed in light of the comments received.

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

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–139–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1997, the FAA issued AD 97–26–19, amendment 39–10262 (62 FR 66980, December 23, 1997), applicable to all Aerospatiale Model ATR42–300 and –320 series airplanes, to require repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection. The existing AD further provides for an optional terminating action for the repetitive inspections. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracking of the lower lugs of the barrel of the MLG, which could lead to collapse of the MLG.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA of cases of rotation of the MLG bushings at the swinging lever hinge. This rotation damaged the anticorrosion protection of the MLG barrel. These cases occurred on airplanes on which the optional terminating action provided in the existing AD had been accomplished. Corrosion of the MLG barrel, if not corrected, could result in reduced structural integrity and possible collapse of the MLG.

Explanation of Relevant Service Information

Messier-Dowty (the manufacturer of landing gears installed on Model ATR42 series airplanes) has issued Service Bulletin 631–32–144, dated January 19, 1998, which describes procedures for repetitive visual inspections of the rubber sealant around the bushings at the MLG barrel and swinging lever hinge point to detect discrepancies (including shearing or separation). Corrective actions for discrepancies include repeating the actions (including an ultrasonic inspection to detect fatigue cracks of the lower lugs of the MLG barrel, and, if necessary, replacement of the MLG barrel assembly with a new or serviceable MLG barrel assembly) specified by Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

Messier-Dowty has also issued Service Bulletin 631–32–145, dated February 16, 1998, which describes procedures for one-time detailed visual and fluorescent penetrant inspections of the MLG barrel lower lugs; and refurbishment of the barrel lower lug and swinging lever assemblies, including restoration of the protective coating, replacement of the old bushings with new bushings, and installation of lubrication fittings. This service bulletin replaces Messier-Dowty Service Bulletin 631–32–133 (which the existing AD refers to for accomplishment of the optional terminating action).

Accomplishment of the actions specified by the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1996–294(B) R4, dated March 10, 1999, in order to ensure 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 supersede AD 97–26–19 to:

- Continue to require repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the MLG barrel, replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection;
- Require new one-time visual and fluorescent penetrant inspections to detect discrepancies of certain lugs, and refurbishment of the MLG barrel and swing lever assemblies; which would terminate the repetitive inspections;
- Reduce the repetitive interval for the ultrasonic inspection for certain airplanes;
- Revise the applicability to include Model ATR42–200 series airplanes, which have been determined to be subject to the identified unsafe condition;
- Revise the applicability to exclude airplanes that have been refurbished in accordance with Messier-Dowty Service Bulletin 631–32–145; and
- Require operators to report results of inspection findings to Messier-Dowty.

The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed AD and French Airworthiness Directive

The proposed AD would require an inspection of the rubber sealant around the bushings at the MLG barrel and swinging lever point within 400 flight hours; the parallel French airworthiness directive recommends accomplishment of the inspection prior to the next ''A'' check. In developing an appropriate compliance time for this proposed AD, the FAA considered the minimum maintenance intervals recommended by the Maintenance Review Board, the DGAC's recommendation, the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. Further, because maintenance schedules, including ''A'' checks, may vary from operator to operator, there would be no assurance that the actions would be accomplished within the proposed compliance time. In light of these factors, the FAA finds that the compliance time of 400 flight hours, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the proposed actions without compromising safety.

Operators should note that, unlike the procedures described in Messier-Dowty Service Bulletin 631–32–144, this proposed AD would not permit further flight with discrepant sealant. The FAA has determined that, because of the safety implications and consequences

associated with such discrepancies, any subject sealant that is found to be discrepant must be repaired or modified prior to further flight.

Operators should note that, although Messier-Dowty Service Bulletin 631–32–145 specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require either replacing the discrepant MLG barrel, or repairing the discrepant part in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

There are approximately 84 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 97–26–19, and retained in this proposed AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspections and refurbishment that are proposed in this AD action would take approximately 29 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,822 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $551,208, or $6,562 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10262 (62 FR 66980, December 23, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Aerospatiale: Docket 98–NM–139–AD. Supersedes AD 97–26–19, Amendment 39–10262.

Applicability: Model ATR42–200, –300, and –320 series airplanes; certificated in any category; except airplanes that have been refurbished in accordance with Messier-Dowty Service Bulletin 631–32–145, dated February 16, 1998.

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 (k)(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 detect and correct discrepancies of the main landing gear (MLG) barrel lower lugs, which could result in reduced structural integrity and possible collapse of the MLG, accomplish the following:

Ultrasonic Inspection

(a) For airplanes on which the actions specified by Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Change Notice No. 1, dated March 18, 1997, have not been accomplished prior to the effective date of this AD: Perform an ultrasonic inspection to detect fatigue cracks of the lower lugs of the barrel of the MLG, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

(1) For Model ATR42–300 and –320 series airplanes: Inspect within 2 years after the last overhaul or repair of the lower lugs of the barrel of the MLG; or within 60 days after March 7, 1997 (the effective date of AD 97–04–09, amendment 39–9933); whichever occurs later.

(2) For Model ATR42–300 and –320 series airplanes: Inspect within 5 years after the installation of a new MLG barrel assembly, or within 60 days after January 7, 1998 (the effective date of AD 97–26–19, amendment 39–10262); whichever occurs later.

(3) For Model ATR42–200 series airplanes: Inspect within 2 years after the last overhaul or repair of the lower lugs of the barrel of the MLG, or within 60 days after the effective date of this AD, whichever occurs later.

(4) For Model ATR42–200 series airplanes: Inspect within 5 years after the installation of a new MLG barrel assembly, or within 60 days after the effective date of this AD, whichever occurs later.

(b) If, during any inspection specified in paragraph (a) of this AD, no ultrasonic echo (as described in Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Change Notice No. 1, dated March 18, 1997) is detected, or if the echo is less than 20%: Except as required by paragraph (c) of this AD, repeat the ultrasonic inspection thereafter at intervals not to exceed 900 landings.

(c) For airplanes that are subject to the repetitive inspection requirements of paragraph (b) of this AD: As of the effective date of this AD, repeat the inspection, as specified by Table 1 of this AD, until the requirements of paragraph (f) of this AD are accomplished. Table 1 is as follows:

TABLE 1.—REPETITIVE INTERVAL

If the first ultrasonic inspection specified by paragraph (a) of this AD was done . . .	Then repeat the ultrasonic inspection . . .
(1) At least 24 months, and less than 42 months, before the effective date of this AD.	Within 500 landings after the first ultrasonic inspection, or within 60 days after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 500 landings.
(2) Less than 24 months before the effective date of this AD, or at any time on or after the effective date of this AD.	At intervals not to exceed 900 landings, for a period not to exceed 24 months after the first ultrasonic inspection of (a) of this AD; and thereafter at intervals not to exceed 500 landings.

(d) If, during any inspection specified in paragraph (a) of this AD, the echo is greater than or equal to 20%: Prior to further flight, replace the MLG barrel assembly with a new or serviceable MLG barrel assembly, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

(1) If the damaged barrel assembly is replaced with an overhauled or repaired assembly, within 2 years after installation of that overhauled or repaired part, accomplish the actions specified in paragraph (a) of this AD.

(2) If the damaged barrel assembly is replaced with a new barrel assembly, within 5 years after installation of that new part, accomplish the actions specified in paragraph (a) of this AD.

Inspection of Sealant

(e) For airplanes on which the actions specified by Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Change Notice No. 1, dated March 18, 1997, have been accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, perform a detailed visual inspection to detect discrepancies (including shearing or separation) of the rubber sealant between the bushings and the MLG barrel lower lugs, and between the bushing and the swinging lever lug, in accordance with Messier-Dowty Service Bulletin 631–32–144, dated January 19, 1998. Repeat the inspection thereafter at intervals not to exceed 400 flight hours, until accomplishment of the actions required by paragraph (f) of this AD.

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

(1) If no discrepancy is detected, repeat the detailed visual inspection specified in paragraph (e) of this AD thereafter at intervals not to exceed 300 landings, until accomplishment of the actions required by paragraph (f) of this AD.

(2) If any discrepancy is detected, prior to further flight, repeat the ultrasonic inspection and all applicable corrective actions specified by paragraphs (a), (b), and (d) of this AD.

Inspections and MLG Refurbishment

(f) For all airplanes: At the applicable time specified by paragraph (g) or (h) of this AD, accomplish the actions required by paragraphs (f)(1) and (f)(2) of this AD, in accordance with Messier-Dowty Service Bulletin 631–32–145, dated February 16, 1998, or Revision 1, dated May 31, 1999. Accomplishment of the inspections and refurbishment required by this paragraph constitutes terminating action for the requirements of this AD.

(1) Perform a one-time detailed visual inspection and a one-time fluorescent penetrant inspection to detect discrepancies (cracks, corrosion, and material defects) of the barrel lower lugs (outboard and inboard).

(i) If no discrepancy is found, prior to further flight, refurbish the lugs in accordance with the service bulletin.

(ii) If any discrepancy is found, prior to further flight, refurbish the lugs in accordance with the service bulletin and repeat the detailed visual inspection and fluorescent penetrant inspection. If any discrepancy remains, prior to further flight, do the actions specified by either paragraph (f)(1)(ii)(A) or (f)(1)(ii)(B) of this AD.

(A) Replace the damaged MLG barrel with a new or reconditioned barrel.

(B) Repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) Refurbish the MLG (including restoring the protective treatments, installing new bushings, and installing new lubrication points of the MLG barrel and swinging lever assemblies).

Compliance Times for Inspections and Refurbishment

(g) For airplanes on which the actions specified by Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, have not been accomplished prior to the effective date of this AD: Do the actions required by paragraph (f) of this AD at the earlier of the times specified by paragraphs (g)(1) and (g)(2) of this AD.

(1) At the next overhaul of the MLG leg, not to exceed 42 months after the effective date of this AD.

(2) Within 42 months after the first ultrasonic inspection in accordance with paragraph (a) of this AD, or within 60 days after the effective date of this AD, whichever occurs later.

(h) For airplanes on which the actions specified by Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, have been accomplished prior the effective date of this AD: Do the actions required by paragraph (f) of this AD within 24 months after the initial sealant inspection required by paragraph (e) of this AD.

Reporting Requirement

(i) At the applicable time specified by paragraph (i)(1) or (i)(2) of this AD, submit a report of the results (both positive and negative findings) of the initial inspections required by paragraphs (a) and (e) of this AD to Messier-Dowty, BP 10–78142 Velizy Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit a report of each inspection within 10 days after performing the applicable inspection.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Spares

(j) As of the effective date of this AD, no person shall install a bushing, part number D66349, on the MLG barrel and swinging lever assemblies on any airplane.

Alternative Methods of Compliance

(k)(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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–114.

(2) Alternative methods of compliance approved previously in accordance with AD 97–26–19, amendment 39–10262, 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 International Branch, ANM–116.

Special Flight Permits

(l) 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 1996–294(B) R4, dated March 10, 1999.

Issued in Renton, Washington, on November 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30122 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 series airplanes. This proposal would require modification of certain areas of the upper skin of the wing. This action is necessary to prevent cracking of the upper skin of the wing, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–279–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–279–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–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking has been detected in the upper skin of the wing at wing stringers 10A and 11A on both the left- and right-hand wings of certain Boeing Model 707 series airplanes. The cracking has been attributed to skin fatigue. This condition, if not corrected, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 2378, Revision 1, dated June 30, 1967, which, among other actions, describes procedures for modification of the upper skin of the wing at wing stringers 10A and 11A. The modification involves removing fasteners at the inboard and outboard ends of the stringer, inspecting these fastener holes using an eddy current method to detect cracking, counterboring the inner surface of the stringer at each fastener hole, installing an anti-fretting strip between the wing and stringer, enlarging fastener holes to remove fatigued metal, and installing new, improved fasteners. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the modification specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and Service Bulletin

Operators should note that the service bulletin recommends, and describes procedures for, an initial ultrasonic inspection of the wing upper skin prior to the accumulation of 18,000 flight hours or within 800 flight hours after receipt of the service bulletin, whichever occurs later. The service bulletin also recommends repetitive inspections at intervals not to exceed 1,600 flight hours, until accomplishment of a repair or

modification. The service bulletin suggests accomplishment of the modification described previously ''at the major overhaul closest to 20,000 flight hours.''

This proposed AD would not require the repetitive inspections specified in the service bulletin but would require the modification of the upper skin of the wing at wing stringers 10A and 11A prior to the accumulation of 20,000 flight hours or within 24 months after the effective date of this AD, whichever occurs later. Mandating the terminating action is based on the FAA's determination that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is consistent with these conditions. Also, because many of the airplanes that are affected by this AD will have already passed the compliance threshold of 20,000 flight hours, as suggested in the service bulletin, the FAA finds that it is appropriate to include a grace period of 24 months after the effective date of this AD, to allow time for the modification to be accomplished on all affected airplanes in a timely manner.

Operators also should note that, as explained previously, the procedures for the modification include an HFEC inspection of fastener holes ''to ensure that there are no cracks.'' However, the service bulletin does not include instructions for corrective actions if a crack is found during this inspection. Therefore, paragraph (b) of this AD states that, if any crack is found during the inspection that is included as part of the modification, the cracks must be repaired in accordance with the applicable chapter of the Boeing 707 Structural Repair Manual.

Cost Impact

There are approximately 5 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $480.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–279–AD.

Applicability: Model 707 series airplanes; as listed in Boeing Service Bulletin 2378, Revision 1, dated June 30, 1967; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the upper skin of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

Modification

(a) Prior to the accumulation of 20,000 total flight hours, or within 24 months after the effective date of this AD, whichever occurs later, modify the upper skin of the wing at wing stringers 10A and 11A on both the left- and right-hand wings of the airplane, in accordance with Boeing Service Bulletin 2378, Revision 1, dated June 30, 1967.

(b) During the high frequency eddy current inspection included as part of the modification required by paragraph (a) of this AD, if any crack is found, prior to further flight, repair in accordance with the applicable section of the Boeing 707 Structural Repair Manual.

Alternative Methods of Compliance

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

Note 2: 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

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

Issued in Renton, Washington, on November 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30320 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and Model 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 A310 and A300–600 series airplanes. This proposal would require revising the Airplane Flight Manual. This action is necessary to provide the flight crew with procedures to maintain airplane controllability in the event of an in-flight thrust reverser deployment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–124–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 action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2000–NM–124–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–124–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, has advised the FAA that certain procedures have been revised in the Airplane Flight Manual (AFM) for Airbus Model A310 and A300–600 series airplanes. In the event of an in-flight thrust reverser deployment, the existing ''ENG REV UNLK'' procedure could result in reduced controllability of the airplane. The revised procedures are intended to address this problem.

The FAA has approved the following revisions to Section 4.02.00 of the Airbus AFM's for Model A310 and A300–600 series airplanes powered by Pratt & Whitney and General Electric engines:

Model/Series	Reference	Date
A310–203, –221, –222, and –304	Ref. 02	November 23, 1999.
A310–324 and –325	Ref. 04	November 24, 1999.
A300–600 B4–605R	Ref. 02	November 23, 1999.
A300–600 F4–605R	Ref. 05	November 24, 1999.
A300–600 B4–622R	Ref. 06	November 25, 1999.

Related AD

The FAA has issued a related AD, AD 99–18–19, amendment 39–11285 (64 FR 48277, September 3, 1999), which is applicable to certain General Electric engines installed on Airbus Model A310 and A300–600 series airplanes. Among other things, that AD requires, at paragraph (g), an AFM revision similar to that proposed in this notice of proposed rulemaking (NPRM). The FAA may consider further rulemaking to remove the AFM revision requirement of paragraph (g) of AD 99–18–19. The FAA can more adequately address the identified unsafe condition by incorporating that requirement into this proposed AD, which is directed to

airplanes rather than engines, and by including all Airbus Model A310 and A300–600 series airplanes powered by Pratt & Whitney and General Electric engines in the applicability of this proposed AD.

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 revising the AFM to provide the flight crew with procedures to maintain airplane controllability in the event of an in-flight thrust reverser deployment.

Cost Impact

The FAA estimates that 116 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to do the actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,960, 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–124–AD.

Applicability: All Model A310 and Model A300–600 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To maintain airplane controllability in the event of an in-flight thrust reverser deployment, accomplish the following:

Revisions to the Airplane Flight Manual (AFM)

(a) Within 30 days after the effective date of this AD, revise the Limitations and Emergency Procedures Sections of the FAA-approved AFM by inserting the following references into Section 4.02.00 of the applicable AFM.

Model/Series	Reference	Date
Airbus A310 AFM:		
A310–203, –221, –222, and –304	Ref. 02	November 23, 1999.
A310–324 and –325	Ref. 04	November 24, 1999.
Airbus A300–600 AFM:		
A300–600 B4–605R	Ref. 02	November 23, 1999.
A300–600 F4–605R	Ref. 05	November 24, 1999.
A300–600 B4–622R	Ref. 06	November 25, 1999.

(b) After the AFM is revised as required by paragraph (a) of this AD, the AFM revision for Airbus Model A310 and A300–600 series airplanes powered by certain General Electric engines, as required by paragraph (g) of AD 99–18–19, amendment 39–11285, may be removed.

Alternative Methods of Compliance

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

Note 1: 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

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

Issued in Renton, Washington, on November 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30321 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–6]

Proposed Establishment of Class D Airspace; Sacramento Mather Airport; Sacramento, CA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish a Class D surface area at Sacramento Mather Airport in Sacramento, CA. A Federal Contract Tower commenced operations at this location earlier this year on a full-time basis, twenty-four hours daily, seven days per week. The Sacramento Mather Airport routinely serves a large volume of air cargo traffic in addition to considerable general aviation activity during both visual and instrument flight conditions. Mather Tower controllers are officially certified as weather observers for this airport, and adequate communication facilities have been established. A review of current and projected operations and procedures at Sacramento Mather Airport fully supports the need for Class D airspace to enhance aviation safety, and in the interest of the commerce and welfare of the community. This action would establish Class D airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Sacramento Mather Airport.

DATES: Comments must be received on or before January 12, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 00–AWP–6, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261. An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520.11, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AWP–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 that would establish a Class D surface area at Sacramento Mather Airport in Sacramento, CA. A Federal Contract Tower commenced operations at this location earlier this year on a full-time basis, twenty-four hours daily, seven days per week. The Sacramento Mather Airport routinely serves a large volume of air cargo traffic in addition to considerable general aviation activity during both visual and instrument flight conditions. Mather Tower controllers are officially certified as weather observers for this airport, and adequate communication facilities have been established. A review of current and projected operations and procedures at Sacramento Mather Airport fully supports the need for Class D airspace to enhance aviation safety, and in the interest of the commerce and welfare of the community. This action would establish Class D airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Sacramento Mather Airport. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, through September 15, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Sacramento Mather Airport, CA [New]

Sacramento Mather Airport, CA
(Lat. 38°33′14″, long. 121°17′51″W)
That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Sacramento Mather Airport.

* * * * *

Issued in Los Angeles, California, on November 16, 2000.

Tommy E. Barclay,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–30250 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–15]

Proposed Modification to Sacramento Executive Airport Class D and E Surface Areas; Sacramento, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class D and E airspace areas at Sacramento Executive Airport by reducing the radius of the basic surface area and by removing those portions of airspace defined as a northeast extension to the basic surface area. The existing surface area radius exceeds criteria specified in FAA Order 7400.2, Procedures for Handling Airspace Matters. Additionally, the northeast extension to the basic surface area is no longer required for instrument approach and departure procedures at Sacramento Executive Airport.

DATES: Comments must be received on or before January 12, 2001.

ADDRESSES: Send comments on the proposed in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520 Docket No. 00–AWP–15, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520.11, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AWP–15''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 that would modify the Sacramento Executive Airport Class D and E Surface Areas at Sacramento, CA. A review of airspace classification and air traffic procedures has made this action necessary. This notice proposes to remove those portions of airspace defined as a northeast extension to the Class D and E Surface Areas at Sacramento Executive Airport, and to reduce the radius of the basic surface area from 4.3-miles to 4.0-miles. The northeast extension and 4.3-mile radius no longer required for any instrument approach or departure procedures at Sacramento Executive Airport. Class D and E2 airspace areas are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, through September 15, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 2000 Class D Airspace.

* * * * *

AWP CA D Sacramento Executive Airport, CA [Revised]

Sacramento Executive Airport, CA
(Lat. 38°30′45″N, long. 121°29′37″W)
Sacramento VORTAC
(Lat. 38°26′37″N, long. 121°33′06″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Sacramento Executive Airport and within 1.8 miles each side of the Sacramento VORTAC 032° radial, extending from the 4-mile radius southwest to the VORTAC, excluding the airspace within the Sacramento International Airport, CA Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA E2 Sacramento Executive Airport, CA [Revised]

Sacramento Executive Airport, CA
(Lat. 38°30′45″N, long. 121°29′37″W)
Sacramento VORTAC
(Lat. 38°26′37″N, long. 121°33′06″W)

That airspace within a 4-mile radius of Sacramento Executive Airport and within 1.8 miles each side of the Sacramento VORTAC 032° radial, extending from the 4-mile radius southwest to the VORTAC, excluding the airspace within the Sacramento International Airport, CA Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 16, 2000.

Tommy E. Barclay,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–30249 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–130–1–7473b; FRL–6907–9]

Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Malfunction, and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern 30 TAC, Chapter 101, General Air Quality Rules, General Rules, specifically, the reporting and recordkeeping requirements for excess emissions resulting from Startup, Shutdown, Malfunction, and Maintenance (SSM) episodes. The EPA is approving these revisions to regulate excess emissions in accordance with the requirements of the Federal Clean Air Act and EPA's policy on excess emissions.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by December 28, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns 30 TAC, Chapter 101, General Air Quality Rules, General Rules, specifically, the reporting from SSM. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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

Dated: November 15, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 00–30108 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6906–5]

RIN 2060–AI41

Protection of Stratospheric Ozone: Incorporation of Clean Air Act Amendments for Reductions in Class I, Group VI Controlled Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With this action, EPA is proposing revisions to the accelerated phaseout regulations that govern the

production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). We are proposing these revisions to implement recent changes to the CAA (Oct. 21, 1998), which direct EPA to conform the U.S. methyl bromide phasedown schedule to the schedule for industrialized nations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). Specifically, today's proposed amendments reflect the Protocol's reductions in the production and consumption of class I, Group VI controlled substances (methyl bromide) for the 2001 calendar year and subsequent calendar years, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of class I, Group VI controlled substances.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are amending the phaseout schedule as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and the rule will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA reiterates that the phasedown and phaseout levels and dates are statutorily required, and that it therefore has no discretion to alter the schedule.

DATES: Written comments must be received on or before December 28, 2000, unless a public hearing is requested. If a public hearing takes place, it will be scheduled for December 13, 2000, after which comments must be received on or before 45 days after the hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on December 5, 2000. After that time, interested parties may call EPA's Stratospheric Ozone Information Hotline at 1–800–296–1996 to inquire with regard to whether a hearing will be held, as well as the time and place of such a hearing.

ADDRESSES: Comments should be submitted in duplicate (two copies) to: Air Docket No. A–2000–24, U.S. Environmental Protection Agency, 2000 Pennsylvania Ave., NW., Room M–1500, Washington, D.C. 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Information Hotline at 1–800–296–1996.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A–2000–24. The docket is located in room M–1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. We may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996 between the hours of 10 a.m. and 4 p.m. Eastern Standard Time, or Amber Moreen, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 401 M Street, S.W., Washington, D.C., 20460, (202) 564–9295.

SUPPLEMENTARY INFORMATION: We are proposing these revisions to reflect changes directly mandated by the statutory language established by Congress in response to the methyl bromide phaseout schedule in the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

What Are the Supporting Analyses?

a. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why 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.

Today's proposed rule contains federal mandates (under the regulatory provisions of the Title II of the UMRA) for the private sector. However, the rule proposes to implement mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any policy discretion by EPA. Specifically, this rule proposes to implement the directive in section 604(h) of the CAA to promulgate a methyl bromide phaseout schedule that is in accordance with the schedule under the Montreal Protocol. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because this rule proposes to extend the current phaseout, the rule reduces costs. Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this proposed rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

b. Regulatory Flexibility Act, 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 proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Type of enterprise	SIC code/ division	Size stand-ard
Industrial Or-ganic Chemi-cals.	2813	1,000
Wholesale Trade	Division F	100

(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, I certify that this action will not have a significant impact on a substantial number of small entities. Today's proposed rule will not impose any requirements on small entities, as it proposes to regulate large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances.

c. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this an ''economically significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

d. Applicability of Executive Order 13045—Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements a Congressional directive to phase out production and import [1] of methyl bromide in accordance with the schedule under the Protocol.

e. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.17).

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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

f. 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. It 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

[1] Because the formula for ''consumption'' is production + import-export, the phrase ''production and import'', in effect, also includes consumption.

Executive Order 13132. This rule regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It implements mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any policy discretion by EPA. Thus, Executive Order 13132 does not apply to this proposed rule.

g. 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 the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities.''

Today's rule proposes to implement requirements specifically set forth by Congress in section 604(h) of the CAA, as added by Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105–277), without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

h. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl bromide, Ozone layer.

Dated: November 17, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–30110 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6909–4]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: ''Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000),'' ''INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000),'' and ''Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000).'' The documents are available for review in the public dockets listed in **ADDRESSES**. The EPA will use these documents to evaluate waste characterization systems and processes applicable to waste streams containing debris waste at INEEL, as requested by DOE. In accordance with EPA's WIPP Compliance Criteria, EPA will conduct an inspection of waste characterization systems and processes at INEEL the week of December 4, 2000, to verify that the proposed systems and processes at INEEL can characterize transuranic solid waste properly, consistent with the Compliance Criteria.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before December 28, 2000.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The DOE documents ''Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000),'' ''INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000),'' and ''Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000),'' are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331-WIPP, or

visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA appropriate documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and in informational dockets in the State of New Mexico, for public review and comment.

We initially approved certain waste characterization processes at INEEL following an inspection on July 28–30, 1998. EPA's approvals of INEEL to date have limited the applicability of the approved waste characterization processes and systems to debris wastes. DOE is proposing to apply the processes that EPA inspected and approved for debris wastes to solid waste streams as well. We will conduct an inspection of INEEL to verify that these additional waste streams can be characterized in compliance with 40 CFR 194.24.

The INEEL documents submitted to EPA are: ''Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000),'' ''INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000),'' and ''Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000).'' The ''Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000)'' and the ''INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000)'' set forth the quality assurance program applied to TRU waste characterization at INEEL. The ''Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000)'' sets forth the waste characterization procedures for TRU wastes at INEEL. We will conduct an inspection of INEEL the week of December 4, 2000, to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Condition 3 of the EPA's WIPP certification decision (appendix A to 40 CFR part 194). In accordance with § 194.8 of the WIPP compliance criteria, we are providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process. Because the inspection will occur during the comment period, we will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, we will notify DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship additional TRU waste from INEEL. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: November 21, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–30416 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6907–4]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 28, 2000.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61

Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334-4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: October 20, 2000.

A. Stanley Meiburg,

Regional Administrator, Region 4.

[FR Doc. 00–30007 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 94

RIN 0905–AE71

Public Health Service Standards for the Protection of Research Misconduct Whistleblowers

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to add a new Subchapter I, Part 94, to Title 42 of the Code of Federal Regulations to implement section 493(e) of the Public Health Service Act. Under this proposed regulation, covered institutions must follow certain requirements for preventing or otherwise responding to occurrences of retaliation against whistleblowers. The purpose of this part is to protect persons who make a good faith allegation that a covered institution or one of its members engaged in or failed to respond adequately to an allegation of research misconduct and persons who cooperate in good faith with an investigation of research misconduct.

DATES: Submit comments on or before January 29, 2001.

ADDRESSES: Address all comments concerning this proposed rule to Chris B. Pascal, J.D., Acting Director, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD, 20852.

You may submit comments and data by sending electronic mail (E-mail) to *whistlereg@osophs.dhhs.gov*.

Submit comments as either a WordPerfect file, version 5.1 or higher, or a Microsoft Word 97 or 2000 file format. Comments can also be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

FOR FURTHER INFORMATION, CONTACT:

Legal Information: Gail L. Gibbons, 301–443–3466 (This is not a toll-free number).

Technical Information: Barbara Bullman, 301–443–5300 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 493(e) of the PHS Act requires the Secretary to establish regulatory standards for preventing and responding to occurrences of retaliation taken against whistleblowers by entities which have a research misconduct assurance under § 493 and by those entities' officials and agents. These entities and their officials and agents are prohibited from retaliating against an employee with respect to the terms and conditions of employment when the employee has in good faith (1) made an allegation that the entity or its officials or agents, has engaged in, or failed to respond adequately to an allegation of, research misconduct, or (2) cooperated with an investigation of such an allegation.

The Commission on Research Integrity (established by section 162 of the NIH Revitalization Act of 1993) recommended that the standards stated in its document, ''Responsible Whistleblowing: A Whistleblower's Bill of Rights'' (Commission Report, Department, 1995), be adopted by regulation. Two of the seven principles in the Whistleblower's Bill of Rights relate directly to the prevention of and response to whistleblower retaliation. These two are: protection from retaliation (''Institutions have a duty not to tolerate or engage in retaliation against good faith whistleblowers.''), and fundamentally fair procedures (''In cases of alleged retaliation * * * whistleblowers should have an opportunity to defend themselves in a proceeding where they can present witnesses and confront those they charge with retaliation against them. * * *''). The substance of those two provisions has been incorporated in this proposed regulation. You may obtain the full text of the Commission's proposed Whistleblower's Bill of Rights upon request at the Office of Research Integrity address above, or on the ORI web page at *http://ori.dhhs.gov/whistle.htm.*

The proposed regulation represents a considered effort by the Department to implement the statutory directive on whistleblower protections in accordance with equitable principles, reason, and sound policy. The Department strongly supports good faith whistleblowers who place themselves at potential risk in disclosing apparent or actual research misconduct involving projects supported by PHS funds. The Department also recognizes that institutions bear a substantial burden in ensuring the fair resolution of good faith allegations that may ultimately prove to be unwarranted. The proposed regulation tries to strike a fair balance among those persons and entities with an interest in the regulation.

This proposed regulation does not apply to Federal agencies. Federal employees are offered separate whistleblower protections under the Federal Whistleblower Protection Act of 1989, 5 U.S.C. 1201, *et seq.*

When an institution receives a retaliation complaint, the proposed regulation allows the whistleblower and the institution up to 30 days to negotiate a settlement. The whistleblower and the institution may agree to extend this period for up to an additional 60 days. During the negotiation period, the parties may agree to use any means of settlement that is legal and consistent with this regulation, including alternative dispute resolution mechanisms such as mediation. However, no settlement under the proposed regulation may prohibit the whistleblower from making allegations of research misconduct or cooperating with an investigation.

If the dispute is not resolved by the end of the negotiation period, the institution must make an administrative proceeding available to the whistleblower to address the retaliation complaint. The proceeding offered by the institution must meet all of the standards in the proposed regulation. A whistleblower may agree to have a retaliation complaint resolved through this proceeding or may elect to pursue any other available remedy provided by law.

Although certain settlement mechanisms such as mediation may be used during the negotiation period, they might not qualify as an acceptable administrative proceeding after the negotiation period has terminated because they do not meet the regulation's requirements. For example, mediation does not constitute an acceptable administrative proceeding because it does not use an ''objective

decisionmaker'' who will make a final determination on whether retaliation occurred, as required by the regulation.

The proposed regulation gives institutions wide latitude in the types of administrative proceedings they may choose to offer. However, the proceeding must meet certain minimum standards such as allowing the whistleblower an opportunity to be represented by counsel and having a qualified, objective decisionmaker. Although the terms ''qualified'' and ''objective'' are not defined in the proposed regulation, the decisionmaker should have significant training, experience, or expertise in adjudicating disputes. Moreover, the decisionmaker must not have any real or apparent conflict of interest in hearing or deciding the case.

One type of administrative proceeding that institutions may make available is binding arbitration. Arbitration is specifically encouraged in the Conference Report recommendations accompanying the NIH Revitalization Act. The Conferees suggested that the regulation should, ''where the whistleblower consents, allow for the possible adjudication of disputes through an arbitration proceeding conducted under the auspices of the American Arbitration Association.'' H.R. Conf. Rep. No. 100, 103d Cong., 1st Sess. 19, 107 (1993).

Another type of administrative proceeding that may be used for resolving retaliation disputes is an institutional fact-finding procedure similar to an option allowed under the ORI ''Guidelines for Institutions and Whistleblowers: Responding to Possible Retaliation Against Whistleblowers in Extramural Research'' (November 20, 1995) (Whistleblower Guidelines) which will be superseded when this part is issued as a final rule. You may obtain a copy of these interim Whistleblower Guidelines by contacting ORI at the above address, or on the ORI web page at *http://ori.dhhs.gov/whistle.htm.* Unlike the administrative proceedings in the interim Whistleblower Guidelines, an institutional fact-finding procedure under the proposed regulation must satisfy the minimum standards specifically in this part.

Other possible administrative proceedings that an institution may use for resolving a retaliation complaint under this part include an academic or institutional employment hearing, a state statutory whistleblower proceeding, or any other administrative proceeding that resolves the complaint. A proceeding satisfies the requirements of this part only if it meets the minimum standards outlined in the proposed regulation. Some states may have whistleblower statutes that provide recourse for a whistleblower but that may not include every requirement of this part. Therefore, the Department requests comments on whether an institution should be permitted to offer a proceeding, whether administrative or judicial, under a state whistleblower law if the law generally parallels the minimum standards of this part but differs in some details.

Regardless of the type of administrative proceeding used, the decisionmaker's final decision must be based on the standards of proof set forth in the regulation. The decisionmaker must order an institutional remedy if the whistleblower proves by a preponderance of the evidence that the act of good faith whistleblowing was a contributing factor in the alleged adverse action taken by the institution or one of its members against the whistleblower. However, even if the whistleblower meets this burden, the decisionmaker may not order an institutional remedy if the institution then proves by clear and convincing evidence that it would have taken the action at issue even in the absence of the whistleblower's allegation or cooperation with an investigation. The legislative history of the PHS Act § 493(e) shows that the Conferees encouraged adoption of this specific standard. Also, the proposed regulatory standard is the same as that used in the Federal Whistleblower Protection Act of 1989, 5 U.S.C. 1201, *et seq.*

If the decisionmaker determines that the institution or one of its members has retaliated against the whistleblower, the proposed regulation allows the decisionmaker to authorize appropriate remedies. For example, the decisionmaker could order reinstatement, back pay, rehabilitation of reputation, or compensation to the whistleblower for expenses, including attorneys' fees, incurred in the administrative proceeding.

The proposed regulation allows both the institution and whistleblower to appeal an adverse finding or remedy by the decisionmaker only if the administrative proceeding used allows for an appeal or an appeal is otherwise provided by state law. The Department has chosen this approach consistent with the current misconduct regulation, 42 CFR part 50, subpart A, and the Office of Science and Technology Policy's (OSTP) proposed government-wide Federal policy for research misconduct, 64 FR 55722, 55724, Oct. 14, 1999, which do not require offering an opportunity to appeal at the institution to a respondent found to have committed misconduct. This is also consistent with the general approach of this regulation to allow flexibility and to mandate only limited requirements for the institutional administrative proceeding. The Department requests comments on whether the availability of an appeal should be required.

Covered institutions would also be required to establish procedures for preventing retaliation against good faith whistleblowers. For example, under the proposed regulation, an institution's preventive activities must include informing all institutional members of the institution's whistleblower procedures and the importance of compliance. These whistleblower procedures must describe the measures that the institution intends to use to prevent retaliation against good faith whistleblowers. Although not specified in the proposed regulation, these measures may include, for example, cautioning respondents or other institutional members against retaliation, relocating the whistleblower when appropriate, and providing educational materials or group instruction on the topic of whistleblower retaliation. We invite suggestions for other steps institutions may take to prevent retaliation against good faith whistleblowers.

Section 493(e)(2) of the PHS Act requires the Director of ORI to monitor covered institutions' implementation of the proposed regulatory standards. Moreover, § 493(e)(3) requires ORI to establish remedies for noncompliance with this whistleblower retaliation regulation. Therefore, the proposed regulation authorizes ORI to review any covered institution's compliance with the regulation and to impose appropriate administrative actions for retaliation or other regulatory noncompliance. Administrative actions against noncompliant institutions may include, but are not limited to, termination or recovery of PHS funds.

Several of the definitions require brief explanations. The proposed regulation adopts the term ''research misconduct'' instead of ''misconduct in science'' as currently used in PHS' scientific misconduct regulation at 42 CFR 50.102 (1989). Section 493(a)(3)(A) of the PHS Act instructs the Secretary to establish a definition for the new term ''research misconduct.'' As discussed earlier, the OSTP has published a proposed government-wide Federal policy for research misconduct for adoption and implementation by agencies that conduct and support research. This policy includes a new proposed definition of research misconduct. 64

FR 55722, Oct.14, 1999. When the OSTP policy is adopted in final form, the Department will implement the policy, including the new definition of ''research misconduct,'' through rulemaking. In the meantime, the term ''research misconduct'' in this proposed regulation will be defined in the same manner as ''misconduct in science,'' as used in the existing PHS misconduct regulation.

The proposed regulation uses the term ''whistleblower'' despite negative connotations that might be associated with it. The common understanding of the term's meaning strongly supports its continued usage, in keeping with the authorizing statute, PHS Act § 493(e), and consistent with other statutes such as the Whistleblower Protection Act of 1989, 5 U.S.C. 1201, *et seq.* The Department strongly disavows any negative inference that might be drawn from the term ''whistleblower.''

The proposed regulation does not confine the use of the term ''whistleblower'' to those who raise an initial allegation of research misconduct. Rather, it defines a whistleblower as any institutional member, including a non-employee, who makes an allegation that a covered institution or one of its members has engaged in, or failed to respond adequately to an allegation of, research misconduct, or who cooperates with an investigation of the allegation. Although the PHS Act § 493(e) specifically protects an ''employee'' with respect to the terms and conditions of employment, the Department is proposing that the regulation cover all institutional members, i.e., all persons who are employed by, affiliated with under a contract or agreement, or under the control of, a covered institution, including students, fellows, and contractors.

The Department may extend its jurisdiction to protect non-employee whistleblowers based upon its general rulemaking authority as well as its authority to establish the terms and conditions of PHS support. Potential whistleblowers include more than just employees of the covered institution. Students and research fellows at an academic institution, for example, may be in a position to allege research misconduct or cooperate with a misconduct investigation. The proposed regulation's more inclusive definition of whistleblower is consistent with the Department's interpretation of the current scientific misconduct regulation which is not limited to employees of the institution but requires protecting ''those persons who, in good faith, make allegations,'' 42 CFR 50.103(d)(13).

Consistent with the proposed definition of whistleblower, the proposed regulation's definition of ''retaliation'' focuses on adverse actions that negatively affect the terms or conditions of the whistleblower's status at the institution, including employment, academic matriculation, and institutional relationship under a grant, contract, or cooperative agreement.

An ''adverse action'' by an institution or one of its members may also include the *threat* of an adverse action if the threat in and of itself negatively affects the conditions of the whistleblower's institutional status. Whether a threat constitutes an ''adverse action'' under the proposed rule must be determined on a case-by-case basis. However, the Department believes that only objectively credible and imminent threats that substantially and negatively inhibit the whistleblower's normal institutional activities would constitute adverse actions.

The proposed regulation requires each covered institution to submit an assurance that the institution is in compliance with this regulation. This requirement will be incorporated in PHS grant application (PHS Form 398) or any other application for PHS contracts or cooperative agreements. PHS Form 398 and all other pertinent application forms already include a certification of compliance with this part which will be changed to an assurance at the next revision.

The proposed regulation applies only to whistleblower retaliation complaints that are made within 180 days of the alleged adverse action, or its discovery. This time limitation for filing retaliation complaints is consistent with other statutory and regulatory programs that establish a date certain after which complaints may not be filed, and encourages whistleblowers to come forward with a complaint promptly. This improves the opportunity for a rapid resolution of the dispute. *See, e.g.,* 29 U.S.C. 1855(b) (Migrant and Seasonal Agricultural Worker Protection; Discrimination prohibited); 10 CFR 50.7(b) (Nuclear Regulatory Commission; Employee Protection). The 180-day limitation period is also consistent with ORI's interim Whistleblower Guidelines, § IV.C.1.

In addition to cases of whistleblower retaliation that occur after this regulation's promulgation, the Department also proposes that the regulation cover pending cases of retaliation, if the retaliation complaint and the underlying whistleblower activity took place within one year before the effective date of the regulation. The Department has required covered institutions to protect whistleblowers since at least 1989 pursuant to 42 CFR 50.103(d)(13). The proposed regulation merely prescribes new procedural, as opposed to substantive, requirements for implementing an already established duty. Thus, extending the applicability of the proposed regulation to previously filed, pending whistleblower complaints does not violate the principle of impermissible retroactivity. *See Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994); *U.S.* v. *Riddick,* 104 F.3d 1239 (10th Cir. 1997).

Analyses of Impacts

A. Review under Executive Order 12866, sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (Pub. L. No. 104–4), and the Regulatory Flexibility Act (5 U.S.C. 603–605).

The Department has examined the potential impact of this proposed rule as directed by Executive Order 12866, sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4), and the Regulatory Flexibility Act (5 U.S.C. 603–605).

Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule is designed to establish regulatory standards for institutions that apply for or receive grants, contracts, or cooperative agreements under the PHS Act. (The proposal has been reviewed by the Office of Management and Budget (OMB) under the terms of the Executive Order.)

The Unfunded Mandates Reform Act of l995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that may result in annual expenditures of State, local, and tribal governments, or by the private sector, of $100 million. As any final rule resulting from this proposal would not result in expenditures of this magnitude, such statements are not necessary.

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis describing the impact of the proposed rule on small entities, but also permits agency heads to certify that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of this rule would be to require covered institutions to implement policies and procedures for preventing and responding to whistleblower retaliation in research misconduct cases.

Currently, ORI receives about 125 allegations of research misconduct a year from the 3700 entities which file assurances with ORI. Of these, only five of the allegations were received from the approximately 1000 entities which are considered small. Therefore, the Secretary certifies that this proposed rule would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

B. Impact of Proposed Actions on Family Well-Being

The Department has examined the potential impact of this proposed rule as directed by section 654 of the Treasury and General Government Appropriations Act of 1999 and determined that this proposed rule would not have an impact on Family Well-Being.

C. Estimated Annual Reporting and Record Keeping Burden

Subchapter I, sections 94.215, 94.310, 94.315, 94.320, 94.340, 94.345(b), 94.380, and 94.425 of the proposed rule contain information collection requirements that are subject to review by the OMB under the Paperwork Reduction Act of l995. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. With respect to the following information collection description, PHS invites comments on (1) whether the proposed collection of information is necessary for the proper performance of PHS functions, including whether the information will have practical utility, (2) the accuracy of the PHS 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 collection of information on respondents, including the use of automatic collection techniques or other forms of information technology.

Title: Public Health Service Standards for the Protection of Research Misconduct Whistleblowers.

Description: This proposed rule implements section 493(e) of the PHS Act (added by section 163 of the NIH Revitalization Act of 1993, Pub. L. No. 103–43). Section 493(e)(1) requires the Secretary to establish standards for preventing and responding to occurrences of whistleblower retaliation by entities, their officials or agents, against an employee in the terms and conditions of employment in response to the employee having made a good faith allegation or cooperated with an investigation of such an allegation. In addition, sections 493(e) (2) and (3) of the PHS Act require that remedies be established for regulatory noncompliance by entities, their officials or agents, and that procedures be established for monitoring implementation of the standards established by the entities.

Description of Respondents: The ''respondents'' for the collection of information described in this regulation are (1) institutions that apply for or receive grants, contracts, or cooperative agreements under the PHS Act for any project or program that involves the conduct of biomedical or behavioral research, and (2) whistleblowers who seek protection from or restitution for retaliation in accordance with the regulation.

Section 94.200

See Section 94.215 for burden statement.

Section 94.205

See Section 94.215 for burden statement.

Section 94.210

See Section 94.215 for burden statement.

Section 94.215(a), (b), and (c)

Number of Respondents—20.

Number of Responses per Respondent—1.

To institute an action for whistleblower protection, a whistleblower must file a retaliation complaint with the responsible official of the covered institution. The retaliation complaint must include (1) a statement containing the required elements listed in this section, and (2) any supporting dates and facts. We estimate that there will be approximately 20 complaints filed by whistleblowers annually. This estimate is based on data that we have compiled from the Annual Report on Possible Research Misconduct (PHS–6349) form submitted by the covered institutions and from the number of actual cases received by ORI.

Annual Average Burden per Response—8 hours

Total Annual Burden—160 hours

Section 305(a) and (b)

See Section 94.320 for statement of burden.

Section 94.310

Number of Respondents—244.

Number of Responses per Respondent—1

Each covered institution that uses subawardees or subcontractors to carry out its PHS funded research must ensure that the subawardees and subcontractors comply with the institution's policies and procedures under this part or obtain assurances from them that will enable the institution to comply with this part.

There are 3700 entities that are currently applying for or receiving PHS research funds, and each of these entities could potentially use a subawardee or subcontractor. We estimate from reviewing the available information that 25% of the covered institutions use a subawardee or subcontractor. In turn, we estimate that only 25% of the subawardees and subcontractors will establish their own policies and procedures for addressing whistleblower retaliation allegations. The other 75% will use the covered institution's compliance procedures.

Annual Average Burden per Response—8 hours.

Total Annual Burden—1848 hours.

Section 94.315

See Section 94.320 for statement of burden.

Section 94.320

Number of Respondents—3700.

Number of Responses per Respondent—1.

Each covered institution that applies for or receives a grant, contract, or cooperative agreement under the PHS Act for any project or program that involves the conduct of biomedical or behavioral research is required to establish written procedures that include (1) specific strategies to prevent whistleblower retaliation by the institution or one of its members, and (2) appropriate administrative actions for verified cases of retaliation.

There are 3700 entities that currently receive or are eligible to receive grants, contracts, or cooperative agreements that would be required to meet this single-time requirement to establish and maintain current policies and procedures designed to prevent whistleblower retaliation and provide a mechanism to respond to a retaliation complaint involving PHS funding or applications therefor.

Annual Average Burden per Response—40 hours.

Total Annual Burden—148,000 hours.

We estimate that it will take between 10–80 hours to establish these

procedures with an average of 40 hours per covered institution. This burden estimate applies only to the first year when all the covered institutions will be required to establish procedures. In subsequent years, the burden will only be for new recipients or applicants of PHS funding or to update a covered entity's procedures.

Section 94.325(a) and (b)

See Section 94.320 for statement of burden.

Section 94.340

Number of Respondents—20.

Number of Responses per Respondent—1.

After receipt of a retaliation complaint, a covered institution is required by this part to provide the whistleblower with a copy of this regulation, 42 CFR Part 94, and the institution's policies and procedures for responding to retaliation complaints. The institution must also provide the whistleblower with written notification of (1) the date the complaint was received by the institution, (2) the date the negotiation period will expire, and (3) the institution's determination regarding the issue of jurisdiction as discussed in § 94.215(b). The institution is also required to process the complaint in accordance with this part.

Annual Average Burden per response—2 hours

Total Burden—40 hours.

Section 94.345(b)

Number of Respondents—1.

Number of Responses per Respondent—1.

The responsible official of the covered institution is required to notify the whistleblower in writing of any decision to provide temporary protection before the final resolution of a retaliation complaint.

This estimate is based on the number of retaliation cases that have been reported to ORI.

Annual Average Burden per response—2 hours.

Total Annual Burden—2 hours.

Section 94.380

Number of Respondents—20.

Number of Responses per Respondent—1.

Covered institutions are required by this part to report to ORI any of the following (1) the receipt of any whistleblower retaliation complaint, (2) the date received, (3) the date the negotiation period under Section 94.365 expires, (4) any temporary protections requested or provided to the whistleblower, (5) the administrative proceedings used or made available to the whistleblower, and how the institution met the standards of Section 94.420, and (6) the final disposition of the complaint, including any settlement.

This reporting estimate is an approximation of the average time expected to be necessary for collection of this information by the covered institution. The estimate is based on past experiences of respondents reporting similar information to ORI.

Annual Average Burden Per Response—2 hours.

Total Annual Burden—40 hours.

Section 94.425

Number of Respondents—20.

Number of Responses per Respondent—1.

At the time a covered institution proposes an administrative proceeding, it must inform the whistleblower of the requirements, rights, procedures, and possible consequences associated with the proceeding.

Annual Average Burden Per Response—1 hour.

Total Annual Burden—20 hours.

The Department will submit a copy of this proposed rule to OMB for its review and approval of this information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th Street, N.W., Rm 10235, Washington, D.C. 20503, Attn: Allison Eydt. Submit written comments by January 29, 2001.

List of Subjects in 42 CFR Part 94

Administrative practice and procedure, Grant programs-science and technology, Reporting and recordkeeping requirements, Research, Science and technology, Whistleblowing.

Dated: July 17, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

Approved: July 25, 2000.

Donna E. Shalala,

Secretary.

For reasons set out in the preamble, the Public Health Service proposes to add a new subchapter I, part 94, to title 42 of the Code of Federal Regulations as follows:

Subchapter I—Policies Relating to Research Misconduct

PART 94—PUBLIC HEALTH SERVICE STANDARDS FOR THE PROTECTION OF RESEARCH MISCONDUCT WHISTLEBLOWERS

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Authority: 42 U.S.C. 216, 241, and 289b.

Subpart A—General

§ 94.100 What is the purpose of this part?

(a) This part describes the standards used by the Office of Research Integrity (ORI) and covered institutions for preventing and responding to retaliation against whistleblowers who in good faith—

(1) Allege that a covered institution or institutional member has engaged in, or failed to respond adequately to, an allegation of research misconduct.

(2) Cooperate with an investigation of the allegation in paragraph (a)(1) of this section.

(b) These standards apply where the allegation or cooperation regarding an investigation concerns research involving Public Health Service (PHS) grants, contracts, or cooperative agreements, or applications therefor.

§ 94.105 What is covered in this part?

This part explains—

(a) The rights and responsibilities of whistleblowers who seek protection from or remedies for retaliation under this regulation and who comply with the requirements of this part.

(b) Standards for covered institutions and their members for preventing or otherwise responding to retaliation against whistleblowers.

(c) Procedures for ORI to determine whether covered institutions have established the required standards and that those standards are being followed.

(d) Remedial actions that ORI may administer when a covered institution engages in an act of retaliation or otherwise does not comply with this regulation.

§ 94.110 Does this part apply to me?

(a) Portions of this part may apply to you if you are a—

(1) Covered institution;

(2) Decisionmaker of a covered institution;

(3) Institutional member of a covered institution;

(4) ORI;

(5) Responsible official of a covered institution;

(6) Subawardee or subcontractor of a covered institution; or

(7) Whistleblower.

(b) The following table shows the portions of this part that may apply to you:

If you are a—	then the portions that may apply to you are—
(1) Covered institution or subawardee or subcontractor of a covered institution.	Subparts A, C, D, E, and F.
(2) Decisionmaker	Subparts A, D, and F and §§ 94.420 and 94.435–94.450.
(3) Institutional member.	Subparts A, C, and F and §§ 94.410 and 94.445.
(4) ORI	Subparts A, E, and F.
(5) Responsible official.	Subparts A, C, and F and §§ 94.205, 94.210, 94.225, 94.430, 94.505, and 94.520.
(6) Whistleblower	Subparts A, B, D, and F, and §§ 94.360–94.375, and 94.505.

§ 94.115 What provisions of confidentiality apply to this part?

(a) The provisions in this part for filing whistleblower retaliation complaints must not be construed to encourage or allow whistleblowers or covered institutions and their members to disclose publicly information regarding research misconduct cases other than to the person(s) designated in this part, or as otherwise provided by law.

(b) A covered institution may take appropriate administrative actions that are consistent with this part in response to breaches of confidentiality.

Subpart B—Whistleblower Retaliation Complaints

§ 94.200 When must you file your retaliation complaint?

(a) You, as a whistleblower, must file your retaliation complaint within 180 calendar days of the alleged adverse action or your discovery of the alleged adverse action.

(b) The alleged adverse action must have occurred within one calendar year after you made your allegation or cooperated with an investigation of the allegation.

(c) However, if your retaliation complaint was pending on the effective date of this part, ORI will consider your complaint to have been timely filed if—

(1) You have filed it within one calendar year before the effective date of this part;

(2) Your allegation or cooperation with an investigation of the allegation also occurred within that year; and

(3) You refile your pending complaint, using the procedures in this subpart for filing complaints, within 120 calendar days of the date on which the covered institution provides the § 94.325 written information to its members about its whistleblower policies and procedures.

§ 94.205 Where do you file a retaliation complaint?

(a) You must file your whistleblower retaliation complaint with the responsible official at the covered institution where the alleged adverse action occurred.

(b) If the responsible official does not acknowledge receipt of your complaint within 10 business days of receiving it, you may file the complaint with ORI. ORI will review the complaint and decide whether to refer it to the covered institution.

§ 94.210 Must your retaliation complaint be in writing?

Yes, your whistleblower retaliation complaint must be made in writing to the responsible official at the covered institution or to ORI.

§ 94.215 What information must you provide in your retaliation complaint?

To establish jurisdiction under this part, you must include in your whistleblower retaliation complaint a statement containing all the following information, including supporting dates and facts:

(a) That you made an allegation that the covered institution or one of its members committed research misconduct or failed to respond adequately to an allegation of research misconduct, or that you cooperated with an investigation of such an allegation that concerns research involving PHS grants, contracts, cooperative agreements, or applications therefor.

(b) That the covered institution or one of its members committed an adverse action against you within one year after you made your allegation or cooperated with an investigation.

(c) That the adverse action resulted from your allegation or cooperation.

(d) That you are making the complaint within 180 calendar days of the alleged adverse action or your discovery of the adverse action.

§ 94.220 May you revise your retaliation complaint?

Yes, if your whistleblower retaliation complaint does not contain all the information required by § 94.215, you may revise it to supply that information at any time before the complaint is fully resolved, dismissed, or otherwise closed under this part.

§ 94.225 May you ask the covered institution to take temporary actions to protect you?

Yes, you may ask the responsible official to take temporary actions under §§ 94.345 through 94.355 to protect you against an existing or threatened adverse action by the covered institution or one of its members at any time before your whistleblower retaliation complaint is fully resolved, dismissed, or otherwise closed under this part.

§ 94.230 May you negotiate or settle your retaliation complaint?

Yes, you may negotiate or settle your whistleblower retaliation complaint with the covered institution by using the procedures described in §§ 94.360 through 94.375.

Subpart C—Responsibilities of Covered Institutions

Responsibilities and Procedures

§ 94.300 What institutions are covered by this part?

This part applies to any institution that applies for or receives grants, contracts, or cooperative agreements under PHS Act, as amended (42 U.S.C. 201, *et seq.*) for any project or program that involves biomedical or behavioral research, research training, or research related activities.

§ 94.305 What responsibilities does a covered institution have?

(a) Covered institutions have primary responsibility for preventing and otherwise responding to occurrences of whistleblower retaliation.

(b) A covered institution and its members must—

(1) Comply with the standards in this part for preventing or otherwise responding to retaliation against whistleblowers if the underlying research misconduct allegation or act of cooperation with an investigation concerns research involving PHS grants, contracts, cooperative agreements, or applications therefor;

(2) Not retaliate against good faith whistleblowers as defined by this part; and

(3) Take all reasonable and necessary steps to prevent or otherwise respond to instances of whistleblower retaliation within the institution.

§ 94.310 Are subawardees and subcontractors of a covered institution included in this part?

(a) Yes, if a covered institution carries out PHS funded research through subawardees or subcontractors, the institution must take reasonable steps to ensure that subawardees and subcontractors and their members comply with this part.

(b) An institution may either require its subawardees and subcontractors to comply with its whistleblower policies and procedures or obtain assurances from them sufficient to allow compliance.

§ 94.315 Must a covered institution establish procedures for whistleblowers?

Yes, a covered institution must establish whistleblower protection procedures and remedies consistent with this part.

§ 94.320 What procedures must a covered institution establish?

A covered institution must establish written procedures for whistleblowers that—

(a) Include specific strategies aimed at preventing whistleblower retaliation by the covered institution or its members;

(b) Provide a mechanism for processing whistleblower complaints;

(c) Authorize appropriate administrative actions for verified cases of retaliation; and

(d) Ensure to a reasonable extent that its institutional members do not retaliate against whistleblowers, including whistleblowers who are not institutional members, such as persons who are located at other institutions or who are members of the general public.

§ 94.325 Who must a covered institution inform of these procedures?

(a) Each covered institution must provide written information informing all of its members about the content of this part and the institution's procedures to implement its requirements and must emphasize the importance of compliance with those procedures.

(b) A covered institution must provide its procedures to ORI and other authorized representatives of the Secretary upon request.

§ 94.330 What is an assurance of compliance?

(a) Effective on [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] each institution, as a condition for receiving PHS funding, is required to provide in its application for that funding an assurance of compliance with this part which is satisfactory to the Secretary.

(b) The institution must assure that it—

(1) Has established written whistleblower protection procedures consistent with this part;

(2) Will comply with and enforce these procedures; and

(3) Will comply with all other requirements of this part.

§ 94.335 Who designates the responsible official, and what are the responsible official's duties?

(a) Each covered institution must—

(1) Appoint one person as the official responsible for overseeing the institution's whistleblower protection procedures;

(2) Authorize and direct the responsible official to execute or coordinate the implementation of the institution's policies and procedures in compliance with this part; and

(3) Authorize the responsible official to oversee each whistleblower retaliation case that arises at the institution, to oversee the negotiation and settlement process described in §§ 94.360 through 94.375, including implementing and enforcing appropriate institutional remedies as part of any agreement with the whistleblower, and to serve as a liaison between the covered institution and ORI.

(b) If involvement of the responsible official in a particular case creates a real or apparent conflict of interest with the covered institution's obligation to protect good faith whistleblowers, or with a fair process for adjudicating the retaliation proceeding, the institution must appoint a substitute official to oversee the case. If the institution is unable to appoint a suitable substitute from within the institution, it must designate a person outside the institution who has no real or apparent conflict of interest.

§ 94.340 How does a covered institution process whistleblower complaints?

(a) A covered institution must process all whistleblower retaliation complaints that are made to the responsible official pursuant to this part.

(b) Within 20 calendar days of receiving a whistleblower retaliation complaint, the institution must provide the whistleblower with copies of this part, the institution's policies and procedures implementing this part, including its administrative procedures under § 94.415, and a written notification, which includes—

(1) The dates the institution received the retaliation complaint and on which it believes the 30 day negotiation period of § 94.365(a) expires; and

(2) The institution's determination of whether the retaliation complaint satisfies the jurisdictional elements required by § 94.215 and, if the jurisdictional elements are not satisfied, the specific basis for that determination.

§ 94.345 Must a covered institution provide temporary protections to whistleblowers?

(a) Consistent with § 94.350, a covered institution must provide reasonable and necessary temporary protections to whistleblowers before the final resolution of a retaliation complaint under this part if, based on the evidence, the responsible official reasonably determines that protection is warranted.

(b) The responsible official must notify the whistleblower in writing of the decision on whether to provide temporary protections.

§ 94.350 What temporary protections may a covered institution offer?

A covered institution must authorize the responsible official to provide any reasonable and necessary temporary protection(s), including but not limited to—

(a) Ensuring the confidentiality of an ongoing research misconduct investigation or retaliation proceeding;

(b) Protecting the whistleblower's institutional status; and

(c) Taking disciplinary actions against institutional members who fail to comply with the responsible official's orders.

§ 94.355 How long do temporary protections last?

When a covered institution and a whistleblower have fully resolved the retaliation complaint, any temporary protection(s) taken to protect the whistleblower may be discontinued or replaced with permanent remedies.

Negotiations and Settlements

§ 94.360 How may a covered institution negotiate and settle a retaliation complaint?

(a) A covered institution and a whistleblower may negotiate and settle a retaliation complaint through any legal means not inconsistent with this part at any time after the institution receives the complaint.

(b) If an institution and a whistleblower agree, any alternative dispute resolution mechanism, such as mediation, may be used to facilitate a resolution during the negotiation period.

(c) Consistent with § 94.335(a)(3), a covered institution must authorize its responsible official to implement any remedies as part of any agreement with a whistleblower.

(d) However, any agreement to settle the complaint must not restrict a whistleblower's right or opportunity to make disclosures or to otherwise cooperate with institutional officials, ORI, or other Federal agencies with respect to the underlying research misconduct allegation(s).

§ 94.365 How long may a covered institution conduct negotiations on a retaliation complaint?

(a) Except as modified by paragraph (b) of this section, a covered institution has 30 calendar days after the responsible official receives a written whistleblower retaliation complaint in which to negotiate a settlement with a whistleblower.

(b) If an institution and a whistleblower have not fully resolved the retaliation complaint within the 30 day period of paragraph (a) of this section, they may mutually agree in writing to extend that period for up to an additional 60 calendar days.

(c) If an institution and a whistleblower fully resolve the complaint during the negotiation period, ORI considers the complaint closed for purposes of this part. The head of the institution, or designee, and the whistleblower must sign an agreement that the complaint has been resolved, and the institution must notify ORI of the agreement within 30 calendar days of its execution, as required by § 94.380(d)(5).

§ 94.370 What must a covered institution do if it questions jurisdiction during negotiations?

If a covered institution provided the § 94.340(b)(2) notice to a whistleblower that the retaliation complaint does not contain the jurisdictional information required by § 94.215, the whistleblower has not adequately revised the complaint, and the institution and the whistleblower continue to dispute whether the complaint falls within the jurisdiction of this part, the institution may, at its discretion, either—

(a) Continue settlement discussions during the 30 to 90 day negotiation period allowed under § 94.365 and move to dismiss the complaint for lack of jurisdiction during any administrative proceeding under subpart D of this part; or

(b) Immediately end the negotiation period, offer the whistleblower an administrative proceeding under subpart D of this part, and in that proceeding, make a preliminary motion to dismiss the complaint for lack of jurisdiction.

§ 94.375 What happens if negotiations do not resolve a retaliation complaint?

(a) If a covered institution and a whistleblower have not fully resolved the retaliation complaint by the end of the 30 to 90 day negotiation period, or if they mutually agree to end negotiations without a settlement, the

institution must immediately offer the whistleblower an administrative proceeding under subpart D of this part.

(b) The administrative proceeding must begin no later than 90 calendar days after the negotiations have ended unless the parties mutually agree otherwise.

Compliance

§ 94.380 What information must a covered institution report to ORI regarding retaliation complaints?

A covered institution must report and submit the following information and items to ORI no later than 30 calendar days after each of the following events occur:

(a) *Complaint filed.* A copy of the whistleblower retaliation complaint, the date the institution received it, and the expected expiration date of the negotiation period under § 94.365.

(b) *Temporary protection requested.* A description of any temporary protection either provided to or requested by the whistleblower and the responsible official's written decision regarding the request.

(c) *Proceeding held or offered.* A description of the administrative proceeding used or made available to resolve the complaint under subpart D of this part, including an explanation of how the institution met the procedural standards of § 94.420.

(d) *Final disposition of complaint.* A copy or description of the final disposition of the retaliation complaint including, where applicable—

(1) The dismissal of the complaint for jurisdictional inadequacy;

(2) The whistleblower's failure to timely file any supporting documentation required by the proposed administrative proceeding;

(3) The whistleblower's election of a remedy other than that made available by the institution;

(4) The outcome of the administrative proceeding under subpart D of this part, including any remedies imposed; and

(5) Any mutual settlement agreement of the complaint including a statement to that effect signed by the head of the institution or designee and the whistleblower. The terms of the settlement agreement need not be disclosed, but the agreement must comply with § 94.360.

§ 94.385 Must a covered institution cooperate with ORI compliance reviews?

Yes, a covered institution and its members must cooperate with any ORI compliance review conducted under § 94.510, including requests for information, on-site visits, inspection of relevant records, and interview of institutional members.

§ 94.390 What happens if a covered institution retaliates or fails to comply with this part?

A covered institution that engages in whistleblower retaliation or otherwise fails to comply with any provision of this part may be subject to any of the PHS administrative actions provided under § 94.520.

Subpart D—Administrative Proceedings

Election of Remedies

§ 94.400 May a whistleblower elect remedies other than an administrative proceeding?

(a) Yes, a whistleblower may choose to resolve a retaliation complaint either through the administrative proceeding made available by the covered institution under this subpart or through any other available remedy provided by law, including remedies under any applicable Federal or State law or other institutional policy or employment agreement.

(b) If the whistleblower elects a remedy other than settlement or the administrative proceeding made available by the covered institution, the whistleblower must provide the institution with written notice of that election.

(c) If the whistleblower does not make an election of remedies under paragraph (b) of this section before the final disposition of the retaliation complaint, whether by settlement, dismissal, or final decision, ORI will consider that the institution has fully satisfied the requirements of this part.

§ 94.405 What actions may a covered institution take if a whistleblower elects a remedy other than an administrative proceeding?

ORI will not require a covered institution to complete any administrative proceeding or otherwise pursue a final resolution of the complaint if a whistleblower elects a remedy for the retaliation complaint other than the administrative proceeding made available under this part.

Administrative Proceedings

§ 94.410 Must a covered institution offer a whistleblower an administrative proceeding?

Yes, for each case of possible whistleblower retaliation to which this part applies and which is not settled, a covered institution must make available and comply with an administrative proceeding that meets the standards in this part for resolving retaliation complaints.

§ 94.415 What types of administrative proceedings may a covered institution offer?

A covered institution may resolve a whistleblower retaliation complaint by any of the following types of administrative proceedings, if the proceeding satisfies all of the elements of § 94.420:

(a) An independent and binding arbitration.

(b) An institutional fact-finding.

(c) An academic or institutional employment hearing.

(d) A state statutory whistleblower proceeding.

(e) Any other administrative proceeding that addresses and resolves the retaliation complaint.

§ 94.420 What elements must a covered institution include in its administrative proceeding?

A covered institution must have written procedures for administrative proceedings to resolve whistleblower retaliation complaints. These procedures must include all of the following elements:

(a) A procedure for appointing a qualified and objective decisionmaker.

(b) The opportunity for the whistleblower and the institution to be represented by counsel. The institution may, but is not required by this part to, provide counsel for the whistleblower.

(c) An equal opportunity for the institution and the whistleblower to present evidence in support of their respective positions or in response to contrary evidence, including having an attorney present and cross-examining witnesses.

(d) A presumption that the whistleblower's research misconduct allegation or cooperation with an investigation of the allegation was made in good faith. If the institution rebuts that presumption in a timely manner by submitting *prima facie* evidence of a lack of good faith, the whistleblower then has the burden to prove good faith by a preponderance of the evidence.

(e) A final written decision made according to the following standards of proof:

(1) Subject to paragraph (e)(2) of this section, the decisionmaker must order a binding institutional remedy according to § 94.445 if the whistleblower proves by a preponderance of the evidence that the whistleblower's research misconduct allegation or cooperation with an investigation of the allegation was a contributing factor in an adverse

action taken by the institution or one of its members.

(2) Even if the whistleblower meets the burden of proof required by paragraph (e)(1) of this section, the decisionmaker must not order an institutional remedy if the institution proves by clear and convincing evidence that the institution or one of its members would have taken the action at issue in the absence of the whistleblower's research misconduct allegation or cooperation with an investigation of the allegation.

§ 94.425 What information must a covered institution provide to a whistleblower?

At the time a covered institution proposes an administrative proceeding, it must provide the whistleblower with a copy of the procedures for the proceeding, and it must fully inform the whistleblower of the requirements, rights, procedures, and possible consequences associated with that proceeding.

§ 94.430 What happens if a whistleblower fails to timely file supporting documentation for the administrative proceeding?

(a) A whistleblower must timely file any supporting documentation required by the proposed administrative proceeding, or the decisionmaker may dismiss the retaliation complaint for purposes of this part. The applicable filing period will be 60 calendar days from the day the covered institution proposed the proceeding if the institution has not specified a filing date or if the specified date is less than 10 calendar days.

(b) However, the whistleblower's failure to timely file will not be grounds for dismissal of the retaliation complaint if either—

(1) The institution failed to inform the whistleblower of the proposed administrative proceeding and its procedures, requirements, rights, and possible consequences in a full and timely manner; or

(2) If the decisionmaker determines there is good cause for the whistleblower's failure to timely file.

§ 94.435 May a covered institution or whistleblower challenge the decisionmaker's qualifications?

(a) Either the whistleblower or the covered institution may challenge the qualifications or objectivity of the administrative proceeding's decisionmaker.

(b) Any challenge must be made within 30 calendar days of the notice of the appointment of the decisionmaker.

(c) If either party challenges the decisionmaker's qualifications or objectivity, the challenge must be made part of the record, and may be subject to any ORI compliance review under § 94.510.

§ 94.440 May the decisionmaker be replaced?

The covered institution may replace the decisionmaker for good cause before final resolution of the retaliation complaint. Good cause includes—

(a) The decisionmaker dies or becomes incapacitated;

(b) The decisionmaker is determined to have a conflict of interest under § 94.435;

(c) The parties mutually agree to a replacement; or

(d) The administrative proceedings' procedures otherwise allow replacement.

Remedies

§ 94.445 What remedies may a decisionmaker impose?

(a) If the decisionmaker in an administrative proceeding determines that the covered institution or one of its members retaliated against the whistleblower, the decisionmaker must order one or more remedies based on the findings. The decisionmaker has broad discretion in determining whether all or any of the following remedies are appropriate and warranted:

(1) Reinstate the terms and conditions of the whistleblower's status at the institution that existed before the retaliatory action, including but not limited to employment (including tenure eligibility and promotion potential), academic matriculation, awarding of degree, or relationship established by grant, contract, or cooperative agreement.

(2) Offer a position within the institution that is comparable financially, vocationally, and otherwise to the position the whistleblower held before the retaliatory action.

(3) Compensate the whistleblower for any financial or other loss incurred between the retaliatory action and the provision of a remedy or remedies under this part.

(4) Restore the whistleblower's reputation, to the greatest extent feasible, within the institution and the broader scientific community. If the whistleblower agrees, this may include an official retraction of negative references or the publication of an exoneration.

(5) Protect the whistleblower against further potential retaliation. This may include monitoring the retaliator for a period of time.

(6) Compensate the whistleblower for part or all expenses, if any, incurred pursuant to the administrative proceeding.

(7) Take any other action allowed under law that reasonably restores the whistleblower's status and reputation.

(b) The institution must implement in a timely manner the remedy(s) ordered by the decisionmaker unless the order is revoked or otherwise modified by an appeal under § 94.450.

Appeals

§ 94.450 May a covered institution or whistleblower appeal an adverse decision or remedy?

Either the covered institution or the whistleblower may appeal an adverse finding or remedy by the decisionmaker only if the administrative proceeding allows an appeal or an appeal is provided by state or other applicable law.

Subpart E—Responsibilities of the Office of Research Integrity

General Provisions

§ 94.500 What are ORI's responsibilities?

(a) ORI is responsible for monitoring covered institutions to determine whether they have established administrative procedures and are following them in accordance with this part and the institution's certification of compliance under § 94.330.

(b) ORI may take the remedial administrative actions, specified in § 94.520, against covered institutions that retaliate against good faith whistleblowers or that otherwise do not comply with the standards and procedures of this part.

§ 94.505 What does ORI do when it receives a whistleblower retaliation complaint?

Consistent with § 94.205, if a whistleblower brings a retaliation complaint directly to ORI, ORI reviews the complaint to determine if, on its face, it meets the requirements of this part. If so, ORI will instruct the whistleblower to send the complaint to the covered institution's responsible official or notify the responsible official directly.

Compliance Reviews

§ 94.510 When does ORI do an institutional compliance review?

(a) ORI may review a covered institution's compliance with the provisions of this part at any time. ORI's decision to begin a compliance review may be based on the institution's written whistleblower procedures, its certification of compliance, its submissions to ORI regarding whistleblower retaliation complaints, or

any other information ORI considers relevant to the institution's compliance with this part.

(b) ORI's review may include, but is not limited to, requests for information, on-site visits, inspection of relevant records, and interviews with institutional members.

§ 94.515 What factors does ORI consider in a compliance review?

(a) If a covered institution complies with each provision of this part, ORI will consider the institution to be in compliance with the institution's certification of compliance and this part.

(b) ORI may consider a covered institution's failure to comply with the provisions of this part to be a material failure to comply with the institution's certification of compliance and with the terms and conditions of any PHS funding provided under an application in which that certification is made.

§ 94.520 What administrative actions may ORI take pursuant to a compliance review?

If ORI determines that a covered institution has engaged in whistleblower retaliation or has failed to comply with any provision of this part, ORI may impose, or recommend to the appropriate authorized Department official, imposition of one or more of the following administrative actions:

(a) A corrective action plan including, where applicable, oversight of the institution's responsible official and its whistleblower protection procedures.

(b) Probationary status under which the noncompliant institution could be subject to cumulative administrative actions if future incidents of institutional noncompliance occur including loss of PHS funding.

(c) Special conditions imposed upon any future PHS awards of grants, contracts, or cooperative agreements to the institution.

(d) Recovery of PHS funds misspent in connection with a retaliatory action or other institutional noncompliance with this part.

(e) Termination of PHS current or future funding to the institution or any part thereof.

(f) Public notice of the determination.

(g) Any other action that ORI finds reasonable and appropriate to correct the noncompliance.

§ 94.525 May a covered institution appeal administrative actions imposed by ORI or the Department?

A covered institution may appeal any administrative actions imposed by ORI or the Department under § 94.520 only if an appeal is specifically allowed by an existing Departmental regulation. The institution must appeal under the terms of the applicable regulation.

Subpart F—Definitions

§ 94.600 Administrative proceeding.

Administrative proceeding means the procedure that a covered institution employs or offers to employ to resolve a whistleblower retaliation complaint in compliance with the provisions of this part.

§ 94.605 Adverse action.

Adverse action means any action taken or threatened by a covered institution or its member(s) that negatively affects the terms or conditions of the whistleblower's status at the institution, including but not limited to employment, promotion, academic matriculation, awarding of a degree, financial aid, or relationship established by grant, contract, or cooperative agreement.

§ 94.610 Allegation.

Allegation means any disclosure, whether by written or oral statement, or other communication, to an institutional or Departmental official, that a covered institution or one of its members has engaged in, or failed to respond adequately to an allegation of, research misconduct as defined by this part and that involves the use of PHS funds or the application for PHS funds.

§ 94.615 Contributing factor.

Contributing factor means any whistleblower activity protected under this part that alone or in combination with other factors results in an adverse action against the whistleblower.

§ 94.620 Covered institution.

Covered institution means any entity, whether individual or corporate, that applies for or receives grants, contracts, or cooperative agreements under the PHS Act, as amended (42 U.S.C. 201, *et seq.*), for any program that involves the conduct of biomedical or behavioral research, research training or research related activity. Covered institutions do not include Federal agencies.

§ 94.625 Decisionmaker.

Decisionmaker means the person(s) designated by the covered institution, according to the rules of the administrative proceeding made available under this part, to preside over the proceeding, to make preliminary decisions of jurisdictional adequacy, to make a final determination of whether retaliation against the whistleblower occurred based on the evidence presented, and to order appropriate remedies consistent with this part.

§ 94.630 Good faith.

(a) *Good faith* means having a belief in the truth of one's allegation or testimony that a reasonable person in the whistleblower's position could have based upon the information known to the whistleblower at the time the allegation was made.

(b) An allegation or cooperation with an investigation is not in good faith if made with knowing or reckless disregard of information that would negate the allegation or testimony.

§ 94.635 Institutional member or member.

(a) *Institutional member* or *member* means a person who is employed by, is affiliated with under a contract or agreement, or is under the control of a covered institution.

(b) *Institutional members* include, but are not limited to, teaching and support staff, researchers, clinicians, technicians, fellows, students, volunteers, and contractors, subcontractors, and subawardees and their employees.

§ 94.640 Investigation.

Investigation, solely for the purpose of this part, means—

(a) An initial assessment by ORI, the Department, or a covered institution.

(b) An inquiry or investigation by the Department or a covered institution.

(c) Any institutional appeal of an allegation of research misconduct involving PHS funds or applications therefor, including preparation for and conduct of any research misconduct hearing.

(d) A review, recommendation, or decision regarding an assessment, inquiry, or investigation by ORI or the Department.

(e) An appeal to the Departmental Appeals Board.

(f) An investigation of an alleged inadequate response to an allegation of research misconduct.

§ 94.645 Office of Research Integrity or ORI.

Office of Research Integrity or *ORI* means the office to which the Secretary has delegated responsibility for addressing research misconduct issues related to PHS activities, including the protection of whistleblowers.

§ 94.650 Public Health Service or PHS.

Public Health Service or *PHS* means the unit within the Department of Health and Human Services that includes the Office of Public Health and Science and the following Operating Divisions: Agency for Healthcare Research and Quality, Agency for Toxic Substances and Disease Registry,

Centers for Disease Control and Prevention, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, the Substance Abuse and Mental Health Services Administration, and the offices of the Regional Health Administrator.

§ 94.655 PHS funds or PHS funding.

PHS funds or *PHS funding* means Public Health Service grants, contracts, or cooperative agreements.

§ 94.660 Research misconduct.

Research misconduct means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

§ 94.665 Responsible official.

Responsible official means the official designated by a covered institution to establish and implement the institution's whistleblower protection procedures as required by this part.

§ 94.670 Retaliation.

Retaliation for the purpose of this part means an adverse action taken against a whistleblower by a covered institution or one of its members in response to—

(a) A good faith allegation that the covered institution or one of its members has engaged in, or failed to respond adequately to an allegation of, research misconduct; or

(b) A good faith cooperation with an investigation of an allegation in paragraph (a) of this section.

§ 94.675 Secretary.

Secretary means the Secretary of the Department of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom the Secretary has delegated authority.

§ 94.680 Whistleblower.

Whistleblower means an institutional member who in good faith—

(a) Makes an allegation that the covered institution or one of its members has engaged in, or failed to respond adequately to an allegation of, research misconduct; or

(b) Cooperates with an investigation of an allegation in paragraph (a) of this section.

[FR Doc. 00–29988 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[I.D. 112100A]

American Lobster Fishery Management

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

ACTION: Notice of public meetings; request for comments.

SUMMARY: NMFS has prepared a draft supplemental environmental impact statement (DSEIS) which identifies several preferred management actions and alternatives for the American lobster fishery in Federal waters. These measures are based upon recommendations in Addendum 1 to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP) made by the Atlantic States Marine Fisheries Commission (Commission) for management of the American lobster resource in Federal waters. NMFS will hold public meetings to receive comments on the biological, economic, and social impacts addressed in the DSEIS.

DATES: Written comments on the preferred lobster management measures and alternatives discussed in the DSEIS must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**), no later than 5 p.m., eastern standard time, on Tuesday, January 9, 2001. Also, verbal comments may be presented at public meetings which are scheduled to be held from Tuesday, December 12 through Friday, December 15, 2000, in Maine, Rhode Island, New York and New Jersey. See **SUPPLEMENTARY INFORMATION** for times and locations of the meetings and special accommodations.

ADDRESSES: Written comments and direct requests for copies of the lobster public meeting document and DSEIS should be sent to the State, Federal and Constituent Programs Office, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298. Comments may also be sent via fax to (978) 281-9117. Comments submitted via email or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Peter Burns, NMFS, Northeast Region, telephone (978) 281-9144, fax (978) 281-9117.

SUPPLEMENTARY INFORMATION: NMFS is considering several new management measures for the American lobster fishery in Federal waters in response to the Commission's recommendations in Addendum 1 to Amendment 3 of the ISFMP. Specifically, NMFS is considering a preferred alternative to control fishing effort in the lobster trap fishery in LCMAs 3, 4 and 5 by limiting access to only those Federal permit holders who can substantiate a history of trap fishing in these areas. The eligibility criteria for access to these management areas would be based upon industry advice developed by the ISFMP's lobster conservation management teams. In LCMA 3, eligible permit holders would have to meet all of the following criteria:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate a history of 2 consecutive calendar-months of active lobster trap fishing in LCMA 3 in any calendar year during the March 25, 1991 through September 1, 1999 qualification period (qualification period). A history of active trap fishing is defined as the fishing of at least 200 traps set in LCMA 3 for the duration of the 2-month qualifying period. Documentation may include copies of vessel logbooks, state or Federal Fishing Trip Reports, permit applications, or any other form of certification that denotes area fished and harvest information.

3. Provision of sales receipts or records showing the landing of at least 25,000 lb (11,370 km) of lobster from any area throughout the range of the resource during the year used as the qualifying year referenced in the preceding paragraph (Criterion number 2).

Under the preferred alternative Federal permit holders who qualify for participation in LCMA 3 based on the preceding criteria would be required to submit a signed affidavit to NMFS certifying the number of traps they have historically fished in LCMA 3. Qualifying permit holders would be restricted to the number of traps they have historically fished in that area, but limited to no more than 3,250 traps, and would be required to comply with annual trap reductions over a 5-year period.

In LCMA 4 and LCMA 5, the preferred alternative would require eligible permit holders to meet all of the following criteria to participate in the trap fishery in either of these areas:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate a history of 2 consecutive

calendar-months of active lobster trap fishing in LCMA 4 and/or LCMA 5 in any calendar year during the qualification period. A history of active trap fishing is defined as the fishing of at least 200 traps set for the duration of the 2-month qualifying period. Documentation may include copies of vessel logbooks, state or Federal Fishing Trip Reports, permit applications, or any other form of certification that denotes area fished and harvest information.

As with LCMA 3, permit holders who qualify for participation in LCMA 4 or LCMA 5 would be required to provide NMFS with a signed affidavit of the number of traps they have historically fished in the elected area(s) during the qualification period. Trap allocations for each qualifying permit holder would be based on the number of traps designated in the signed affidavit. Unlike the preferred alternative's provisions for LCMA 3, there would be no maximum trap limit or annual trap reduction schedule for LCMA 4 or LCMA 5.

Alternatives to this action include: (1) maintaining the current management scenario requiring lobster trap fishers to designate specific LCMAs for trap fishing and abide by either the nearshore area trap limit of 800 if LCMA 4 or LCMA 5 is selected exclusively or in combination with any other LCMA, or the offshore area trap limit of 1,800 if LCMA 3 is selected exclusive of any other management area; (2) implementing limited access in LCMAs 3, 4 and 5 based on historical participation, but retaining the current trap limits; and (3) implementing the historical participation regime but establishing a 1,440 maximum trap limit for vessels qualifying for LCMA 4 or LCMA 5.

The DSEIS also analyzes the impacts of a measure allowing Federal lobster permit holders who also hold full commercial New Hampshire state lobster licenses to fish an additional 400 traps in New Hampshire State waters. The alternative to this option would maintain the status quo. Specifically, it would require dual Federal and New Hampshire commercial lobster licensees to abide by the more restrictive Federal trap limit of 800 traps in state and Federal waters. It would also require those dual licensees who elect to fish more than the Federal trap limit in New Hampshire State waters to forfeit their Federal lobster permit.

The third measure analyzed in the DSEIS would adjust the boundary lines for LCMA 1, LCMA 2, and the Outer Cape LCMA to maintain consistency with the ISFMP. The alternative to this preferred option would maintain the boundary lines for these LCMAs as they currently exist.

In publishing this document, NMFS announces four public meetings to discuss the preferred lobster management measures and alternatives. The dates, times, and locations of the meetings are scheduled as follows:

Meeting Dates and Times

1. Tuesday, December 12, 2000, 3 p.m.--Narragansett Town Hall Assembly Room, 25 Fifth Street, Narragansett, RI.

2. Wednesday, December 13, 2000, 3 p.m.--Holiday Inn by the Bay, 88 Spring Street, Portland, ME.

3. Thursday, December 14, 2000, 4:30 p.m.--Riverhead Town Board Room at Town Hall, 200 Howell Ave, Riverhead, NY.

4. Friday, December 15, 2000, 1 p.m.--Community Room at the Toms River Municipal Complex, 33 Washington Street, Toms River, NJ.

Electronic Access

The lobster public meeting document and DSEIS are also accessible via the Internet at *www.nero.nmfs.gov/ro/doc/nr.htm*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Burns (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1851 *et. seq.*

Dated: November 21, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–30310 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 65, No. 229
Tuesday, November 28, 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.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

In the Matter of Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Order Approving Transfer of License and Conforming Amendment

I.

The Power Authority of the State of New York (PASNY or the Authority) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3 or the facility) at steady-state power levels not in excess of 3025 megawatts thermal. The facility, which is owned by PASNY, is located in Westchester County, New York. The license authorizes PASNY to possess, use, and operate the facility.

II.

Under cover of letters dated May 11, 2000, and May 12, 2000, PASNY, Entergy Nuclear Indian Point 3, LLC (Entergy Nuclear IP3), and Entergy Nuclear Operations, Inc. (ENO), submitted an application requesting approval of the proposed transfer of the IP3 operating license to Entergy Nuclear IP3 to possess and use and to ENO to possess, use, and operate IP3, and approval of a conforming amendment to reflect the transfer. The application was supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Entergy Nuclear IP3, a Delaware corporation, is a wholly owned indirect subsidiary of Entergy Corporation and a wholly owned indirect subsidiary of Entergy Nuclear Holding Company #1. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. After completion of the proposed transfer, Entergy Nuclear IP3 would be the owner of IP3 and ENO would be the operator of IP3. The conforming amendment would remove the current licensee from the facility operating license and would add Entergy Nuclear IP3 and ENO in its place, as appropriate.

The applicants propose that, after the sale and transfer of IP3 to Entergy Nuclear IP3, the Authority would retain all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facility, while the trust fund would remain at all times committed to the decommissioning of IP3. The September 21, 2000, supplement to the application, filed by the Authority on behalf of itself and the other transfer applicants, includes the following proposals and commitments relating specifically to the Authority's retention of the decommissioning trust fund for IP3:

(1) The Authority will waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to IP3 to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority.

(2) Upon the transfer of IP3, and pursuant to Section 7 of the decommissioning agreement between Entergy Nuclear IP3, Entergy Nuclear, Inc., and the Authority, Entergy Nuclear IP3 shall have the sole discretion to permanently cease operations of IP3. For purposes of compliance with NRC requirements, by operation of the transfer Entergy Nuclear IP3 and ENO shall have sole responsibility for decommissioning IP3, and the Authority's responsibility under Commission jurisdiction with respect to IP3 will be limited solely to the holding and disbursement of funds for the decommissioning of the unit. Entergy Nuclear IP3 and ENO will have control over all physical decommissioning activities. The Authority's waiver and decommissioning responsibility as described above only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear IP3 or until the decommissioning of IP3 has been completed in accordance with NRC regulations and guidance, whichever shall first occur.

In addition, the November 3, 2000, supplement to the application proposes that the relevant trust agreement will provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by PASNY, Entergy Nuclear IP3, and ENO, pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or to submit written comments was published in the **Federal Register** on June 28, 2000 (65 FR 39954). Pursuant to such notice, the Commission received a hearing request dated July 14, 2000, from the Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr.; a hearing request dated July 17, 2000, from the Utility Workers Union of America, AFL–CIO, Local 1–2; a hearing request dated July 26, 2000, from the Town of Cortlandt Manor, New York, and the Hendrick Hudson School District; a hearing request dated July 31, 2000, from the County of Westchester, New York; and a hearing request dated July 31, 2000, from the Citizens Awareness Network. These requests are currently pending before the Commission.

Pursuant to 10 CFR § 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Nuclear Regulatory Commission shall give its consent in writing. After reviewing the information in the application and all supplements thereto (collectively, the application)

and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear IP3 and ENO are qualified to be the holders of the license to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear IP3 and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated November 9, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of the license as described herein and in the application to Entergy Nuclear IP3 and ENO is approved, subject to the following conditions:

(1) Before the completion of the sale and transfer of IP3, Entergy Nuclear IP3 and ENO shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) For purposes of ensuring public health and safety, Entergy Nuclear IP3, upon the transfer of the IP3 license to it, shall provide decommissioning funding assurance for IP3 by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by the Authority for IP3 after the transfer of the IP3 license to Entergy Nuclear IP3 may be credited towards the amount required under this paragraph.

(3) If the assets of any decommissioning trust maintained by the Authority for IP3 are retained in such trust following the transfer of the IP3 license to Entergy Nuclear IP3 and ENO instead of being transferred to any trust established by Entergy Nuclear IP3, the Authority shall maintain the assets as retained in such trust in accordance with the application for the transfer of the IP3 license.

(4) The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to the expenses related to decommissioning IP3 as defined by the NRC in its regulations and issuances, and as provided in the IP3 license and any amendments thereto.

(5) The decommissioning trust agreement shall provide that no contribution to the decommissioning trust fund that consists of property other than liquid assets shall be permitted.

(6) With respect to the decommissioning trust fund, investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear IP3, Entergy Nuclear FitzPatrick, LLC, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.

(7) The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(8) The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(9) The decommissioning trust agreement shall provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements. The NRC shall not be a beneficiary of the trust or of any of the trust funds, unless required by law to be so for the sole purpose of enforcing the provisions or purpose of the trust agreement as set forth above.

(10) Article VI of the decommissioning trust agreement shall require that, notwithstanding the provision of Section 6.01(ii)(a) of the current decommissioning trust agreement, PASNY may not terminate any fund established under the Master Trust for IP3 except after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate.

(11) Entergy Nuclear Indian Point 3, or its successors or assigns, shall take no action that would adversely affect any contract between it and the Authority for the Authority's eventual payment of decommissioning funds from the trust.

(12) Entergy Nuclear Indian Point 3, or its successors or assigns, shall inform the NRC within 30 days of any adverse developments with respect to the Authority's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning IP3.

(13) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(14) The Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to IP3 to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, and remain subject to the Commission's jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters

concerning compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund to Entergy Nuclear IP3 or the decommissioning of IP3 has been completed in accordance with NRC regulations and guidance, whichever occurs first.

(15) Entergy Nuclear IP3 shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the license for IP3 and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(16) Entergy Nuclear IP3 and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies to void, cancel, or modify the $70 million contingency commitment to provide funding for IP3 as represented in the application, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(17) After receiving all required regulatory approvals of the transfer of IP3, the transfer applicants shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of IP3. This notice shall be given to the Director, Office of Nuclear Reactor Regulation at least three business days before the closing date of the sale and transfer of IP3. If the transfer of the license is not completed by November 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application submitted under cover letters dated May 11 and May 12, 2000, and supplements dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, and the safety evaluation dated November 9, 2000, which are available for public inspection at the NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30283 Filed 11–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

In the Matter of Power Authority of the State of New York; (James A. FitzPatrick Nuclear Power Plant); Order Approving Transfer of License and Conforming Amendment

I.

The Power Authority of the State of New York (PASNY or the Authority) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick or the facility) at steady-state power levels not in excess of 2536 megawatts thermal. The facility, which is owned by PASNY, is located in Oswego County, New York. The license authorizes PASNY to possess, use, and operate the facility.

II.

Under cover of letters dated May 11, 2000, and May 12, 2000, PASNY, Entergy Nuclear FitzPatrick, LLC (Entergy Nuclear FitzPatrick), and Entergy Nuclear Operations, Inc. (ENO), submitted an application requesting approval of the proposed transfer of the FitzPatrick operating license to Entergy Nuclear FitzPatrick to possess and use and to ENO to possess, use, and operate FitzPatrick, and approval of a conforming amendment to reflect the transfer. The application was supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Entergy Nuclear FitzPatrick, a Delaware corporation, is a wholly owned indirect subsidiary of Entergy Corporation and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #1. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. After completion of the proposed transfer, Entergy Nuclear FitzPatrick would be the owner of FitzPatrick, and ENO would be the operator of FitzPatrick. The conforming amendment would remove the current licensee from the facility operating license and would add Entergy Nuclear FitzPatrick and ENO in its place, as appropriate.

The applicants propose that, after the sale and transfer of FitzPatrick to Entergy Nuclear FitzPatrick, the Authority would retain all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facility, while the trust fund would remain at all times committed to the decommissioning of FitzPatrick. The September 21, 2000, supplement to the application, filed by the Authority on behalf of itself and the other transfer applicants, includes the following proposals and commitments relating specifically to the Authority's retention of the decommissioning trust fund for FitzPatrick:

(1) The Authority will waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority.

(2) Upon the transfer of FitzPatrick, and pursuant to Section 7 of the decommissioning agreement between Entergy Nuclear FitzPatrick, Entergy Nuclear, Inc., and the Authority, Entergy Nuclear FitzPatrick shall have the sole discretion to permanently cease operations of FitzPatrick. For purposes of compliance with NRC requirements, by operation of the transfer Entergy Nuclear FitzPatrick and ENO shall have sole responsibility for decommissioning FitzPatrick, and the Authority's responsibility under Commission jurisdiction with respect to FitzPatrick will be limited solely to the holding and disbursement of funds for the decommissioning of the unit. Entergy Nuclear FitzPatrick and ENO will have control over all physical decommissioning activities. The Authority's waiver and decommissioning responsibility as described above only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear FitzPatrick or until the decommissioning of FitzPatrick has been completed in accordance with

NRC regulations and guidance, whichever shall first occur.

In addition, the November 3, 2000, supplement to the application proposes that the relevant trust agreement will provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by PASNY, Entergy Nuclear FitzPatrick, and ENO, pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on June 28, 2000 (65 FR 39954). Pursuant to such notice, the Commission received a hearing request dated July 14, 2000, from the Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr.; and a hearing request dated July 31, 2000, from the Citizens Awareness Network. These requests are currently pending before the Commission. No written comments were submitted.

Pursuant to 10 CFR 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Nuclear Regulatory Commission shall give its consent in writing. After reviewing the information in the application and all supplements thereto (collectively, the application) and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear FitzPatrick and ENO are qualified to be the holders of the license, to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear FitzPatrick and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated November 9, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the license as described herein and in the application to Entergy Nuclear FitzPatrick and ENO is approved, subject to the following conditions:

(1) Before the completion of the sale and transfer of FitzPatrick, Entergy Nuclear FitzPatrick and ENO shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) For purposes of ensuring public health and safety, Entergy Nuclear FitzPatrick, upon the transfer of the FitzPatrick license, shall provide decommissioning funding assurance for FitzPatrick by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by the Authority for FitzPatrick after the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick may be credited towards the amount required under this paragraph.

(3) If the assets of any decommissioning trust maintained by the Authority for FitzPatrick are retained in such trust following the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick and ENO instead of being transferred to any trust established by Entergy Nuclear FitzPatrick, the Authority shall maintain the assets as retained in such trust in accordance with the application for the transfer of the FitzPatrick license.

(4) The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to the expenses related to decommissioning FitzPatrick as defined by the NRC in its regulations and issuances, and as provided in the FitzPatrick license and any amendments thereto.

(5) The decommissioning trust agreement shall provide that no contribution to the decommissioning trust that consists of property other than liquid assets shall be permitted.

(6) With respect to the decommissioning trust fund, investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear IP3, LLC, Entergy Nuclear FitzPatrick, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.

(7) The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(8) The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(9) The decommissioning trust agreement shall provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning

requirements. The NRC shall not be a beneficiary of the trust or of any of the trust funds, unless required by law to be so for the sole purpose of enforcing the provisions or purpose of the trust agreement as set forth above.

(10) Article VI of the decommissioning trust agreement shall require that, notwithstanding the provision of Section 6.01(ii)(a) of the current decommissioning trust agreement, PASNY may not terminate any fund established under the Master Trust for FitzPatrick except after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate.

(11) Entergy Nuclear FitzPatrick, ENO, or their successors or assigns shall take no action that would adversely affect any contract between it and the Authority for the Authority's eventual payment of decommissioning funds from the trust.

(12) Entergy Nuclear FitzPatrick and ENO, or their successors or assigns shall inform the NRC within 30 days of any adverse developments with respect to the Authority's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning FitzPatrick.

(13) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(14) The Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, and remain subject to the Commission's jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund to Entergy Nuclear FitzPatrick or the decommissioning of FitzPatrick has been completed in accordance with NRC regulations and guidance, whichever occurs first.

(15) Entergy Nuclear FitzPatrick shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the license for FitzPatrick and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(16) Entergy Nuclear FitzPatrick and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the $70 million contingency commitment to provide funding for the FitzPatrick plant as represented in the application, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(17) After receiving all required regulatory approvals of the transfer of FitzPatrick, the transfer applicants shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of FitzPatrick. If the transfer of the license is not completed by November 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended.

It is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application submitted under cover letters dated May 11 and May 12, 2000, and supplements dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, and the safety evaluation dated November 9, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–30284 Filed 11–27–00; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas Private Investment Corporation (OPIC) on December 7, 2000. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 7, 2000, and will begin promptly at 2:00 p.m. Prospective participants must submit to OPIC before close of business December 6, 2000, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW., 12th Floor, Washington, DC. Notices and prepared statements should be sent ot Richard C. Horanburg, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527 (e-mail at *rhoranburg@opic.gov* or facsimile at (202) 218–0179).

FOR FURTHER INFORMATION CONTACT: Richard C. Horanburg, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, (202)–336–8417, by e-mail at *rhoranburg@opic.gov,* or by fascimile at (202) 218–0179).

SUPPLEMENTARY INFORMATION:

Procedure

(a) *Attendance; Participation.* The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 6, 2000. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a

concise summary of the subject matter of the presentation.

(b) *Prepared Statements.* Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 6, 2000. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) *Duration of Presentations.* Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) *Agenda.* Upon receipt of the required notices, OPIC will prepare an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) *Publication of Proceedings.* A verbatim transcript of the hearing will be compiled. The transcript will be available to members of the public at the cost of reproduction.

Background

OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended (''the Act'') to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be ''taking steps to adopt and implement laws that extend internationally recognized workers rights to workers in that country (including any designated zone in that country).''

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Public Law 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

Dated: November 21, 2000.

Richard C. Horanburg,

Director, Office of Congressional Affairs.

[FR Doc. 00–30220 Filed 11–27–00; 8:45 am]

BILLING CODE 3210–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes to Close December 1, 2000, Meeting

At its meeting on November 14, 2000, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 1, 2000, in Washington, D.C., via teleconference.

Matter To Be Considered: 1. Postal Rate Commission Opinion and Recommended Decision in Docket No. R2000–1, Omnibus Rate Case.

Persons Expected To Attend: Governors Ballard, Daniels, del Junco, Dyhrkopp, Fineman, Kessler, McWherter, Rider and Walsh, Postmaster General Henderson, Deputy Postmaster General Nolan, Secretary to the Board Hunter, and General Counsel Gibbons.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information: Requests for information about the meeting should be addressed to the Secretary of the Board, David G. Hunter, at (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 00–30367 Filed 11–22–00; 8:45 am]

BILLING CODE 7710–12–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, December 4, 2000; 8:30 a.m., Tuesday, December 5, 2000; 10 a.m., Tuesday, December 5, 2000.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: December 4 (Closed); December 5—8:30 a.m. (Open); 10 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Monday, December 4—1 p.m. (Closed)

1. Audit Committee Report and Review of Year-End Financial Statements.
2. Preliminary Fiscal year 2002 Appropriation Request.
3. Postal Rate Commission Opinion and Recommended Decision in Docket No. R2000–1, Omnibus Rate Case.
4. Personnel Matters.
5. Compensation Issues.
6. Strategic Planning.
7. Fiscal year 2001 EVA Variable Pay Program.

Tuesday, December 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 13–14, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Fiscal Year 2000 Audited Financial Statements.
4. Final Fiscal Year 2002 Appropriation Request.
5. Capital Investments.
   a. Milwaukee, Wisconsin, P&DC Ramp and Maneuvering Area Restoration.
   b. Indianapolis, Indiana, Consolidated Mail Processing Annex.
   c. Automated Flat Feed and OCR Additional Funding.
6. Tentative Agenda for the January 8–9, 2001, meeting in Washington, DC.

Tuesday, December 5—10 a.m. (Closed)

1. Continuation of Monday's Closed Agenda.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Secretary.

[FR Doc. 00–30368 Filed 11–22–00; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24745 812–12250]

Neuberger Berman Equity Funds, et al., Notice of Application

November 21, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'' for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit the series of certain registered open-end management investment companies to acquire all of the assets and stated liabilities of the series of certain other registered open-end management investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Neuberger Berman Equity Funds, on behalf of its underlying series: Neuberger Berman Century, Focus, Genesis, Guardian, International, Manhattan, Millennium, Partners, Regency, Socially Responsive, and Technology Funds; and Neuberger Berman Income Funds, on behalf of its underlying series: Neuberger Berman Government Money, Municipal Money, High Yield Bond, and Limited Maturity Bond Funds, as well as Neuberger Berman Cash Reserves and Neuberger Berman Municipal Securities Trust (each series individually an ''Acquiring Fund'' and collectively, the ''Acquiring Funds''); Neuberger Berman Equity Trust, on behalf of its underlying series: Neuberger Berman Century, Focus, Genesis, Guardian, International, Manhattan, Millennium, Partners, Regency, Socially Responsive and Technology Trusts; Neuberger Berman Equity Assets, on behalf of its underlying series: Neuberger Berman Focus, Genesis, Guardian, Manhattan, Millennium, Partners and Socially Responsive Assets; Neuberger Berman Equity Series, on behalf of its underlying series: Neuberger Berman Genesis Institutional; and Neuberger Berman Income Trust, on behalf of its underlying series: Neuberger Berman Limited Maturity Bond and Institutional Cash Trusts (each series individually an ''Acquired Fund'' and collectively, the ''Acquired Funds'') (the Acquired Funds and the Acquiring Funds collectively, the ''Funds''); Neuberger Berman Management Inc. (''NBMI''), and Neuberger Berman, LLC (''Neuberger Berman'') (NBMI and Neuberger Berman are referred to collectively as the ''Advisers'').

Filing Dates: The application was filed on September 13, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 605 Third Avenue, 21st Floor, New York, NY 10158–3698.

FOR FURTHER INFORMATION CONTACT: Lidian Pereira, Senior Counsel, at (202) 942–0524 or Christine Y. Greenlees, Branch Chief, at (202) 952–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Funds are registered under the Act as open-end management investment companies. Each of the Funds is a feeder fund in a master-feeder structure. Each Acquired Fund and its corresponding Acquiring Fund invest in the same master fund (the ''Master Fund''). Each Master Fund is registered under the Act as an open-end management investment company.

2. Both NBMI and Neuberger Berman are registered as investment advisers under the Investment Advisers Act of 1940. NBMI serves as the investment adviser for each Master Fund and as the administrator for each Fund. Neuberger Berman serves as sub-adviser to each master Fund. NBMI and Neuberger Berman are wholly-owned subsidiaries of Neuberger Berman, Inc., a publicly owned holding company owned primarily by the employees of Neuberger Berman. One of the Advisers or individuals or entities that are affiliated with the Advisers hold beneficially or of record more than 5% and in some cases more than 25%, of the outstanding shares of several of the Funds. In addition, certain third parties each owns more than 5% of two of the Funds. Further, certain Funds each owns 5% or more of the corresponding Master Fund.

3. On June 6, 2000, the boards of trustees of the Acquiring Funds and the Acquired Funds (the ''Boards''), respectively, including all of the trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), approved an Agreement and Plan of Reorganization (''the Agreement''). Under the Agreement, each Acquiring Fund will acquire all of the assets and assume the stated liabilities of its corresponding Acquired Fund in exchange for shares of the Trust Class, Advisor Class or Institutional Class of the Acquiring Fund (the ''Reorganization''). Pursuant to the Agreement, each shareholder of an Acquired Fund will receive shares of the Trust Class, Advisor Class or Institutional Class of the corresponding Acquiring Fund having an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Fund's shares held by that shareholder, determined as of the close of regular trading on New York Stock Exchange on the closing date (the ''Closing Date''). The valuation will be made in accordance with the procedures set forth in the then-current prospectus and statement of additional information for the Funds. On or as soon as practicable after the Closing Date, the classes of shares of the Acquiring Fund received by the Acquired Fund will be distributed *pro rata* to the shareholders of the Acquired Fund and the Acquired Fund will be dissolved. The Reorganization is designed to convert the master-feeder structure of the Funds into a multiple class structure.

4. Each of the Acquired Funds has investment objectives, policies, and restrictions that are identical to those of its corresponding Acquiring Fund and to those of its Master Fund. The Acquired Funds and the Acquiring Funds are sold without a front-end or contingent deferred sales charge. The Acquired Funds and the Acquiring Funds impose distribution and service fees that will remain the same after the Reorganization. No sales charge, redemption fee or exchange fee will be

imposed in connection with the Reorganization.

5. The Boards, including a majority of the Independent Trustees, determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered a number of factors, including: (a) The terms and conditions of the Reorganization; (b) the potential administrative benefits and savings that may be achieved from the simplified structure; (c) the tax-free nature of the reorganization; (d) the compatibility of the investment objectives, policies and restrictions among the Funds; and (e) the greater likelihood of asset growth that potentially may result from a more familiar structure and the greater economies of scale that can be achieved from such asset growth, including without limitation lower management fees that take effect at certain asset level breakpoints. The Funds will bear the expenses associated with the Reorganization, as determined by the Board of each Fund.

6. The consummation of the Reorganization is subject to various conditions, including: (a) The approval of the Reorganization by the shareholders of each Acquired Fund; (b) completion of all filings with, and receipt of all necessary approvals from, the Commission; and (c) delivery of legal opinions regarding the federal tax consequences of the Reorganization. The Reorganization Plan for an Acquired Fund may be terminated at any time prior to the Closing Date if the Board of either that Acquired Fund or the Acquiring Fund determines in good faith that the Reorganization is not in the best interests of the shareholders. Applicants agree not to make any changes to the Reorganization Plan that materially affect the application without prior approval of the Commission staff.

7. A prospectus/proxy statement was filed with the Commission on June 26, 2000, and was mailed to the Acquired Fund shareholders beginning the week of August 28, 2000. The shareholders of the Acquired Funds considered and approved the Reorganization on October 31, 2000.[1]

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and, thus, the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that more than 5% of the outstanding shares of certain Funds is held beneficially or of record by either NBMI, Neuberger Berman, or individual Neuberger Berman officers and/or directors of affiliated entities of such individuals. Applicants also state that certain third parties are the record owners of 5% or more of each of two Funds. Under section 2(a)(3)(A) of the Act, NBMI, Neuberger Berman and these individuals/entities could be deemed ''affiliated persons'' of the Funds whose shares they own. Applicants further state that certain Funds may be deemed affiliated persons of affiliated persons of one another because each owns 5% or more of the outstanding voting securities of the same Master Fund. Thus, each of the Acquired Funds might be deemed to be an affiliated person of an affiliated person of an Acquiring Fund for reasons other than those set forth in rule 17a–8.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to complete the proposed Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching. Applicants also state that the Boards, including all of the Independent Trustees, found that participation in the Reorganization is in the best interests of each Fund and that interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants further state that the Reorganization will be based on the Funds' relative NAVs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–30245 Filed 11–27–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Three of the Acquired Funds did not obtain sufficient votes to approve their respective Reorganization. On November 13, 2000, the Boards of these three Acquired Funds voted to approve the Reorganizations, pursuant to authority granted in the Funds' Declarations of Trust.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43574, File No. 4–429]

Joint Industry Plan; Order Approving an Amendment To the Options Intermarket Linkage Plan to Add the Pacific Exchange, Inc. as a Participant

November 16, 2000.

I. Introduction

On September 20, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') in accordance with section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] a proposed amendment to the Options Intermarket Linkage Plan (''Linkage Plan'')[3] to become a

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the International Securities Exchange LLC (''ISE''). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

participant to the Linkage Plan. Notice of filing and an order granting temporary effectiveness of the proposal through January 18, 2001 was published in the **Federal Register** on September 29, 2000.[4] The Commission did not receive any comments on the proposal. This order approves the proposed amendment on a permanent basis.

II. Discussion

The current participants to the Linkage Plan are the Amex, CBOE, ISE, PCX, and Philadelphia Stock Exchange, Inc. (''Phlx'').[5] The proposed amendment to the Linkage Plan would add the PCX as a participant to the Linkage Plan on a permanent basis. The PCX has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding the admission of new participants. Sections 4(c) and 5(c)(ii) of the Linkage Plan provide for the admission of new participants, in which eligible exchanges[6] may become a party to the plan by: (i) Executing a copy of the plan, as then in effect; (ii) effecting an amendment to the plan reflecting the addition of the new participant's name and obtaining the Commission's approval of the plan as amended to reflect the new participant; and (iii) paying the applicable fee.

After careful review, the Commission finds that the proposed Linkage Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposed amendment, which permits the PCX to become a participant to the Linkage Plan, is consistent with Congress' goal, as set forth in section 11A(a)(1)(D) of the Act,[7] in which Congress found that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The Commission believes the proposed amendment to include PCX as a participant in the Linkage Plan is also consistent with Rule 11Aa3–2[8] under the Act in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by allowing the linked markets to more easily access better prices available on the participant exchanges. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow the PCX to become a participant in the Linkage Plan. The Commission finds, therefore, that approving the proposed Linkage Plan amendment is appropriate and consistent with section 11A of the Act.[9]

III. Conclusion

It Is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act[10] and Rule 11Aa3–2 thereunder,[11] that the proposed Linkage Plan amendment is approved and the PCX is authorized to act jointly with the other participants to the Linkage Plan in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30192 Filed 11–27–00; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 43310 (September 20, 2000), 65 FR 58583.

[5] On September 20, 2000, the Commission approved the Phlx as a participant to the Linkage Plan on a temporary basis. *See* Securities Exchange Act Release No. 43311 (September 20, 2000), 65 FR 58584 (September 29, 2000). The Commission notes that it is concurrently approving a proposed amendment approving the Phlx as a participant to the Linkage Plan on a permanent basis. *See* Securities Exchange Act Release No. 43573 (November 16, 2000).

[6] The Linkage Plan defines as ''eligible exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation and a party to the Options Price Reporting Authority Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

[7] 15 U.S.C. 78k–1(a)(1)(D).

[8] 17 CFR 240.11Aa3–2.

[9] 15 U.S.C. 78k–1.

[10] 15 U.S.C. 78k–1(a)(3)(B).

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43573, File No. 4–429]

Joint Industry Plan; Order Approving an Amendment to the Options Intermarket Linkage Plan to Add the Philadelphia Stock Exchange, Inc. as a Participant

November 16, 2000.

I. Introduction

On September 20, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') in accordance with section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] a proposed amendment to the Options Intermarket Linkage Plan (''Linkage Plan'')[3] to become a participant to the Linkage Plan. Notice of filing and an order granting temporary effectiveness of the proposal through January 18, 2001 was published in the **Federal Register** on September 29, 2000.[4] The Commission did not receive any comments on the proposal. This order approves the proposed amendment on a permanent basis.

II. Discussion

The current participants to the Linkage Plan are the Amex, CBOE, ISE, Pacific Exchange, Inc. (''PCX''), and Phlx.[5] The proposed amendment to the Linkage Plan would add the Phlx as a participant to the Linkage Plan on a permanent basis. The Phlx has submitted a singed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding the admission of new participants. Sections 4(c) and 5(C)(ii) of the Linkage Plan provide for the admission of new participants, in which eligible exchanges[6] may become a party to the plan by: (i) Executing a copy of the plan, as then in effect; (ii) effecting an amendment to the plan reflecting the addition of the new participant's name and obtaining the Commissions approval of the plan as

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the International Securities Exchange LLC (''ISE''). *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release No. 43311 (September 20, 2000), 65 FR 58584.

[5] On September 20, 2000, the Commission approved the PCX as a participant to the Linkage Plan on a temporary basis. *See* Securities Exchange Act Release No. 43310 (September 20, 2000), 65 FR 58583 (September 29, 2000). The Commission notes that it is concurrently approving a proposed amendment approving the PCX as a participant to the Linkage Plan on a permanent basis. *See* Securities Exchange Act Release No. 43574 (November 16, 2000).

[6] The Linkage Plan defines an ''eligible exchange'' as national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation and a party to the Options Price Reporting Authority Plan for Reporting of Consolidated Last Sale Reports and Quotation Information.

amended to reflect the new participant; and (iii) paying the applicable fee.

After careful review, the Commission finds that the proposed Linkage Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposed amendment, which permits the Phlx to become a participant to the Linkage Plan, is consistent with Congress' goal, as set forth in section 11A(a)(1)(D) of the Act,[7] in which Congress found that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The Commission believes the proposed amendment to include Phlx as a participant in the Linkage Plan is also consistent with the Rule 11Aa3–2 [8] under the Act in that it will contribute to the maintenance of fair and orderly markets and remove impediments to the perfect the mechanisms of a national market system by allowing the linked markets to more easily access better prices available on the participant exchanges. The Commission finds, therefore, that approving the proposed Linkage Plan amendment is appropriate and consistent with section 11A of the Act.[9]

III. Conclusion

It Is Therefore Ordered, pursuant to section 11A(a)(3)(B) of the Act [10] and Rule 11Aa3–2 thereunder,[11] that the proposed Linkage Plan amendment is approved and the Phlx is authorized to act jointly with the other participants to the Linkage Plan in planning, developing, operating, or regulating the intermarket linkage plan as a means of facilitating a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30193 Filed 11–27–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78k–1(a)(1)(D).

[8] 17 CFR 240.11Aa3–2.

[9] 15 U.S.C. 78–1.

[10] 15 U.S.C. 78k–1(a)(3)(B).

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43580; File No. SR–NASD–00–58]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Member Firm Transactions With Association Employees

November 17, 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 September 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation. 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

NASD Regulation proposes to adopt new NASD Rule 3090 relating to member firm transactions with NASD employees. Proposed new language is *italicized.*

* * * * *

3090. Transactions Involving Association and American Stock Exchange Employees

(a) *When a member has actual notice that an Association or American Stock Exchange employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to the Association.*

(b) *No member shall directly or indirectly make any loan of money or securities to any Association or American Stock Exchange employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.*

(c) *Notwithstanding the annual dollar limitation set forth in Conduct Rule 3060(a), no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Association or American Stock Exchange employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term ''regulatory matter'' includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 NASD Code of Conduct imposes detailed ethics and conflict-of-interest requirements on Association employees (*i.e.,* employees of the NASD and all of its subsidiary and affiliated companies). The NASD is proposing a new rule, NASD Conduct Rule 3090, that will impose parallel requirements on NASD members in their dealings with Association and American Stock Exchange (''Amex'') employees.[3]

Proposed NASD Rule 3090 addresses three areas: (1) Providing duplicate statements for brokerage accounts in which Association or Amex employees have a financial interest or can control trading; (2) loans by NASD members to Association or Amex employees; and (3) gifts by NASD members to Association or Amex employees.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Amex, whose employees are subject to the NASD Code of Conduct as of October 2000, filed a rule proposal (No. SR–Amex–00–23) to adopt Amex Rule 417, which is virtually identical to proposed NASD Rule 3090. Securities Exchange Act Release No. 43468 (October 20, 2000), 65 FR 65034 (October 31, 2000); Securities Exchange Act Release No. 43587 (November 17, 2000).

a. *Employees' Brokerage Accounts.* The NASD Code of Conduct imposes significant restriction on employees' investments. Among other things, employees may not own stock of broker/dealers or companies that derive more than 25% of their gross revenues from broker/dealer activities, or stock purchased as part of an initial public offering.[4] The NASD reviews duplicate statements for employees' brokerage accounts to ensure that employees have abided by these restrictions. NASD Regulation represents that New NASD Rule 3090(a) will help ensure that an NASD member receives and implements an instruction to send duplicate account statements to the NASD whenever the member has actual notice that an Association or Amex employee has a financial interest in, or controls trading in, an account. Currently, NASD employees are required to request the broker/dealers with which they maintain accounts to send duplicate account statements to the NASD. However, NASD rules currently do not impose a corresponding obligation on NASD members to obtain and implement such an instruction.

In administering the NASD Code of Conduct, the NASD routinely runs exception reports to determine whether duplicate statements are being received for all reported employee accounts. Employees for whom the NASD has not received duplicate account statements are reported to their department heads for follow-up. Each time exception reports are run, numerous employee accounts are listed as delinquent. In following up on such accounts, the NASD has frequently encountered instances in which NASD employees have repeatedly instructed their broker/dealer in writing that duplicate statements are to be sent to the NASD, but the broker/dealer has failed to implement the instruction. In addition, there have been instances in which broker/dealers have refused to implement the instruction on the ground that they were not required to do so.

When employees' duplicate statement instructions are not implemented, the NASD has no means of monitoring trading in employee accounts. Currently, there is no rule that specifically requires member firms to implement such instructions. NASD Regulation believes that new NASD Rule 3090(a) will remedy this deficiency by imposing on member firms an affirmative obligation to promptly obtain and implement a duplicate statement instruction when they have actual notice that an Association or Amex employee has a financial interest in, or controls trading in, an account. The information necessary to give members such actual notice is already included on the new account forms used by most broker/dealers, and on a standardized duplicate instruction form that Association and Amex employees can provide to their broker/dealers.

NASD Regulations believes that new NASD Rule 3090(a) imposes requirements that are analogous to those that other self-regulatory organizations already impose (*e.g.,* New York Stock Exchange Rule 407). In addition, NASD Regulation believes that the proposed requirements are similar to those currently imposed by NASD Rule 3050, which applies when an NASD member firm carries an account for a person associated with another broker/dealer.

NASD Regulation represents that new NASD Rule 3090(a) would work as follows with respect to new accounts: When a new account form indicates that an NASD employee has an interest in a proposed new account, the NASD member firm would instruct the employee to obtain a duplicate instruction form (available on the NASD's corporate Intranet), complete the form, and provide it to the member before the account is opened. The NASD expects that most employees will anticipate this request and provide the member with the instruction at the time they seek to open the account. It would not be necessary for NASD officials to issue a letter authorizing the opening of each account.

With respect to existing accounts, new NASD Rule 3090(a) contemplates that Association and Amex employees will use the above-referenced duplicate instruction form to give NASD members actual notice of their interest in an existing account. A member receiving such a form would be expected to promptly implement the duplicate statement instruction.

NASD Regulation represents that the proposed rule would apply prospectively to new accounts, and to those existing accounts as to which an NASD member has actual notice that an Association or Amex employee has financial interest or controls trading. NASD members will not be required to review existing accounts to identify those in which Association or Amex employees may have an interest or control trading.

b. *Loans to Employees.* NASD Regulation represents that new NASD Rule 3090(b) is intended to implement an SEC staff recommendation that the NASD adopt a rule prohibiting NASD members from making loans to Association or Amex employees outside routine brokerage or banking relationships.[5] The NASD Code of Conduct already prohibits employees from accepting loans from NASD members, Nasdaq issuers, or any person with whom the NASD transacts business.[6] NASD Regulation believes that new NASD Rule 3090(b) will simply prevent NASD members from making loans to employees. Consistent with existing NASD Code of Conduct provisions, the prohibition on loans would not apply to loans that are clearly motivated by a family or personal relationship. Thus, for example, a registered representative would not be precluded from making a personal loan to an adult child who works at the NASD or Amex.

c. *Gifts to Employees.* NASD Regulation represents that new NASD Rule 3090(c) also implements an SEC staff recommendation.[7] The proposed rule change will parallel NASD Code of Conduct provisions that permit employees to accept business gifts with an aggregate annual value of $100 when no conflict of interest exists, but prohibit employees from accepting a business gift or courtesy from persons involved in regulatory matters in which the employee is involved.[8] Specifically, the proposed amendment will state that, notwithstanding NASD Rule 3060(a) (which generally permits NASD members to give business gifts with an aggregate annual value of $100 to employees of others), members may not give business gifts or courtesies of more than nominal value to an Association or Amex employee who has responsibility for a specific regulatory matter that involves the member. A ''regulatory matter'' would encompass such matters as examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings involving a member. The proposed rule would permit members to give items of nominal value to employees responsible for regulatory matters affecting the member, NASD Regulation represents that, for example, a member would be permitted to offer minor refreshments, such as a soft drink or coffee, to NASD Regulation employees conducting an on-site examination.

[4] NASD Code of Conduct, Section VIII, Paragraph E.

[5] *See* Letter from Lori Richards, Director, OCIE, SEC, to Richard Syron, Chairman and Chief Executive Officer, Amex, November 6, 1998.

[6] NASD Code of Conduct, Section IX, Paragraph C.3.

[7] *Id.*

[8] NASD Code of Conduct, Section IX.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the NASD believes that, by assisting the NASD in ensuring employee compliance with NASD ethical standards, the proposed rule change serves the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD Regulation did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–00–58 and should be submitted by December 19, 2000.

[9] 15 U.S.C. 78o(b)(6).

IV. Commission's 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 association,[10] and in particular, the requirements of section 15A(b)(6) [11] of the Act, because it is designed to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is based upon recommendations made by SEC staff to the SROs. The amendments to the rules are designed to promote a high level of professional and personal ethical conduct by NASD members and employees and to ensure that NASD members and employees do not place their own personal and financial interests above the regulatory interests of the NASD. The proposal also helps to bring the NASD's conflict of interest and ethical conduct provisions in line with those of the NASD Code of Conduct and the Amex (a subsidiary of the NASD) and helps eliminate any confusion regarding the application of these provisions to employees of both self-regulatory organizations.

The Commission finds good cause for approving the proposed rule change (SR–NASD–00–58) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission approved a proposal by the Amex to adopt Amex Rule 417, which is virtually identical to new NASD Rule 3090.[12]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–00–58) is hereby approved on an accelerated basis.

[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] 15 U.S.C. 78o–3(b)(6).

[12] *See* Securities Exchange Act Release No. 43587 (November 17, 2000) (Order approving SR–Amex–00–23).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30195 Filed 11–27–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43581; File No. SR–NASD–00–15]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to NASD Rule 2520, ''Margin Requirements''

November 17, 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 31, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation. NASD Regulation amended its proposal on July 31, 2000, and September 13, 2000.[3] The

[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 Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 28, 2000 (''Amendment No. 1''); and *see* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, dated September 11, 2000 (''Amendment No. 2''). Among other things, Amendment No. 1 revises the proposal to: (1) Provide technical corrections for various provisions within NASD Rules 2520 and 2522; (2) revise the cash account provisions of NASD Rule 2520(f)(2)(M)(ii)d to indicate that a long warrant or option that is not listed must be guaranteed by the carrying broker-dealer to serve as an offset for a short position, or the short position will not be eligible for the cash account and must be margined separately pursuant to NASD Rule 2520(f)(2)(D); (3) amend NASD Rule 2520(f)(2) to provide that the margin for a long over-the-counter (''OTC'') option or warrant with over nine months until expiration will be 75% of the option's or warrant's in-the-money amount; (4) amend NASD Rules 2520(f)(2)(D)(i) and 2520(f)(2)(G)(v) to clarify that the minimum amount of margin that must be maintained on certain positions is a percentage of the aggregate exercise price; (5) provide definitions of ''stock index warrant'' and ''escrow agreement'' in connection with cash-settled options or warrants;

Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons, and simultaneously is approving the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Rules 2520 ''margin Requirements,'' and 2522 ''Definitions Related to Options, Currency Warrants, Currency Index Warrants, and Stock Index Warrants Transactions'' to: (1) Expand the types of short options positions that would be considered ''covered'' and eligible for the cash account to include short positions that are components of certain limited risk spread strategies (box spreads, butterfly spreads, and debits and credit spreads), provided that any potential risk to the carrying broker-dealer is paid for in full and retained in the account; (2) allow an escrow agreement that conforms to NASD standards to serve in lieu of cash or cash equivalents for certain spread positions held in a cash account; (3) reduce the required margin for butterfly and box spreads by recognizing butterfly and box spreads as strategies (rather than separate transactions) for purposes of margin treatment; (4) recognize various hedging strategies involving stocks (or other underlying instruments) paired with long options, and reduce the required maintenance margin on such hedged stock positions; (5) permit the extension of credit on certain long term options and warrants with over nine months until expiration; (6) permit the extension of credit on certain long box spreads; and (7) provide that the minimum margin requirements for a short put on a listed option will be the current value of the put plus a specified percentage of the put option's aggregate exercise price, and the minimum margin requirement for a short put on an over-the-counter (''OTC'') option will be a specified percentage of the put option's aggregate exercise price.

and (6) clarify the purpose of NASD Regulation's proposed definitions of ''current market value,'' ''butterfly spread,'' and ''box spread.'' Amendment No. 2: (1) Deletes an incorrect reference to currency index warrants in Amendment No. 1 and clarifies that a description in Amendment No. 1 refers to NASD Rule 2520(f)(2)(M)(ii)d rather than NASD Rule 2520(f)(2)(L)(ii)d; (2) provides a revised definition of ''escrow agreement;'' (3) clarifies the definition of American-style options to indicate that American-style options are exercisable at any time up to and including the day of expiration; and (4) adds a comma in the title of NASD Rule 2522 after the word ''Options.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

Purpose

NASD Regulation proposes to amend NASD Rule 2520 to: (1) Expand the types of short options positions that would be considered ''covered'' and eligible for the cash account to include short positions that are components of certain limited risk spread strategies (box spreads, butterfly spreads, and debit and credit spreads), provided that any potential risk to the carrying broker-dealer is paid for in full and retained in the account; (2) allow an escrow agreement that conforms to NASD standards to serve in lieu of cash or cash equivalents for certain spread positions held in a cash account; (3) reduce the required margin for butterfly and box spreads by recognizing butterfly and box spreads as strategies (rather than separate transactions) for purposes of margin treatment; (4) recognize various hedging strategies involving stocks (or other underlying instruments) paired with long options, and reduce the required maintenance margin on such hedged stock positions; (5) permit the extension of credit on certain long term options and warrants with over nine months until expiration; (6) permit the extension of credit on certain long box spreads; and (7) provide that the minimum margin requirement for a short uncovered put on a listed option will be the current value of the put plus a specified percentage of the put option's aggregate exercise price, and the minimum margin requirement for a short uncovered put on an OTC option will be a specified percentage of the put option's aggregate exercise price. In addition, NASD Regulation proposes to amend NASD Rule 2522 to include certain new definitions relating to the proposed rule change.

A. Background

Until several years ago, the margin requirements governing listed options [4] were set forth in Regulation T, ''Credit by Brokers and Dealers.'' [5] However, Federal Reserve Board amendments to Regulation T that became effective on June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the self-regulatory organizations (''SROs''), subject to approval by the Commission.[6]

Following the amendments to Regulation T, an informal ad hoc committee (the ''431 Committee'') was formed to consider changes to the margin rules of the New York Stock Exchange (''NYSE'') and the NASD (NYSE Rule 431 and NASD Rule 2520, respectively). The 431 Committee created various subcommittees, including an Options Subcommittee (''Options Subcommittee''), to ensure that the NYSE's and NASD's margin rules were consistent in order to prevent confusion and avoid conferring advantages on members that are required to comply with one rule and not the other. NASD Regulation proposes to amend NASD Rules 2520 and 2522 based on recommendations by the 431 Committee and the Options Subcommittee. The proposed amendments to NASD Rules 2520 and 2522 are substantially identical to amendments made in proposals filed by the Chicago Board Options Exchange, Inc. (''CBOE'') and the NYSE, which the Commission approved.[7]

B. Definitions

Currently, NASD Rule 2520 defines the ''current market value'' or ''current market price'' of an option, currency warrant, currency index warrant, or stock index warrant as the total cost or net proceeds of the option contract or warrant on the day it was purchased or sold. NASD Regulation proposes to revise the definition of ''current market value'' or ''current market price'' to indicate that the current market value or current market price of an option, currency warrant, currency index

[4] Listed options are issued by The Options Clearing Corporation (''OCC''), a clearing agency registered pursuant to Section 17A of the Act.

[5] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System (''Federal Reserve Board'') issued Regulation T pursuant to the Act.

[6] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996).

[7] *See* Securities Exchange Act Release Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving File No. SR–CBOE–97–67) (''CBOE Approval Order''); and 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03) (''NYSE Approval Order'').

warrant, or stock index warrant are as defined in Section 220.2 of Regulation T.[8] The revised definition appears in NASD Rule 2522.

NASD Regulation also proposes to define the ''butterfly spread'' [9] and ''box spread'' [10] options strategies.[11] The definitions are important elements of NASD Regulation's proposal to recognize and specify the cash and margin account requirements for butterfly and box spreads. The definitions will specify what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatments.

In addition, NASD Regulation proposes to define the terms ''stock index warrant'' [12] and ''escrow agreement,'' as used in connection with cash-settled calls, puts, currency warrants, currency index warrants or stock index warrants carried short and as used in connection with non-cash settled put or call options carried short.[13]

Finally, NASD Regulation proposes to move the definitions of ''exercise settlement amount,'' ''aggregate exercise price'' and ''aggregate current index value'' from NASD Rule 2520(f)(2)(C) to NASD Rule 2522(a) for ease of reference so that the definitions relating to transactions in options, currency warrants, currency index warrants and stock index warrants will be located in NASD Rule 2522.[14]

C. Extension of Credit on Long Term Options and Warrants

The proposal would allow extensions of credit on certain long listed and OTC [15]options (*i.e.*, put or call options on a stock or stock index) and warrant products (*i.e.*, stock index warrants, but not traditional stock warrants issued by a corporation on its own stock).[16] The proposal provides no loan value for foreign currency options. Only those options or warrants with expirations exceeding nine months (''long term'') will be eligible for credit extension.[17] For long term listed options and warrants, the proposed rule change requires initial and maintenance margin of cost less than 75% of the current market value of the option or warrant. Therefore, NASD members would be able to loan up to 25% of the current market value of a long term listed option or warrant. For example, if an investor purchased a listed call option on stock XYZ that expired in January 2001 for approximately $100 (excluding commissions), the investor would be required to deposit and maintain at least $75. The investor could borrow the remaining $25 from the member. Under the current margin rules, the investor would be required to pay the entire $100.

The proposal also would permit the extension of credit on certain long term OTC options and warrants. Specifically, an NASD member firm could extend credit on an OTC put or call option on a stock or stock index, and on an OTC stock index warrant. In addition to being more than nine months from expiration, a marginable OTC option or warrant must: (1) be in-the-money and valued at all times for margin purposes at an amount not to exceed the in-the-money amount; (2) be guaranteed by the carrying broker-dealer; and (3) have an American-style [18] exercise provision. The proposal requires initial and maintenance margin of 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.*, its intrinsic value).

When the time remaining until expiration for an option or warrant (listed or OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100% of the current market value. Options or warrants expiring in less than nine months would have no loan value under the proposal because of the leverage and volatility of those instruments.

D. Extension of Credit on Long Box Spread in European-Style Options

The proposal also would permit the extension of credit on long box spreads composed entirely of European-style options [19] that are listed or guaranteed by the carrying broker-dealer. A long box spread is a strategy composed of four option positions and is designed to lock-in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box. The two exercise prices embedded in the strategy determine the buy and the sell price.[20]

For long box spreads made up of European-style options, the proposal would require initial and maintenance

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[8] *See* Amendment No. 1, *supra* note 3.

[9] The proposal defines ''butterfly speread'' as: [A]n aggegation of positions in three series of either put or call options all having the same underlying component or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price, or (B) a ''short butterfly spread'' in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price.

[10] The proposal defines ''box spread'' as: [A]n aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price, or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

[11] *See* Amendment No. 1, *supra* note 3.

[12] The proposal defines a ''stock index warrant'' as a put or call warrant that overlies a broad index stock group or an industry index stock group. *See* Amendment No. 1, *supra* note 3.

[13] The proposal defines the term ''escrow agreement,'' when used in connection with cash settled calls, puts, currency warrants, currency index warrants or stock index warrants carried short as any agreement issued in a form acceptable to the Association under which a bank holding cash, cash equivalents, one or more qualified equity securities or a combination thereof in the case of a call option or warrant; or cash, cash equivalents or a combination thereof in the case of a put option or warrant is obligated (in the case of an option) to pay the creditor the exercise settlement amount in the event an option is assigned an exercise notice or, (in the case of a warrant) the funds sufficient to purchase a warrant sold short in the event of a buy-in. *See* Amendment No. 2, *supra* note 3. The proposal defines the term ''escrow agreement'' when used in connection with non-cash settled put or call options carried short as any agreement issued in a form acceptable to the Association under which a bank holding the underlying security (in the case of a call option) or required cash or cash equivalents or a combination thereof (in the case of a put option) is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security against payment of the exercise price in the event the call or put is assigned an exercise notice. *See* Amendment No. 1, *supra* note 3.

[14] *See* Amendment No. 1, *supra* note 3.

[15] Unlike listed options, OTC options are not issued by the OCC. OTC options and warrants are not listed or traded on a registered national securities exchange or through the automated quotation system of a registered securities association.

[16] Throughout the remainder of this notice and approval order, the term ''warrant'' means this type of warrant.

[17] For any stock option, stock index option, or stock index warrant that expires in nine months or less, initial margin must be deposited and maintained equal to at least 100% of the purchase price of the option or warrant. *See* Amendment No. 1, *supra* note 3.

[18] An American-style option is exercisable on any business day prior to its expiration date and on its expiration date. *See* Amendment No. 2, *supra* note 3.

[19] A European-style option may be exercised only at its expiration pursuant to the rules of the OCC. *See* NASD Rule 2860(U).

[20] For example, an investor might be long 1 XYZ Jan 50 Call @ 7 and short 1 XYZ Jan 50 Put @ 1 (''buy side''), and short 1 XYZ Jan 60 Call @ 2 and long 1 XYZ Jan 60 Put @ 5½ (''sell side''). As required by NASD Regulation's proposed definition of ''long box spread,'' the sell side exercise price exceeds the buy side exercise price. In this example, the long box spread is a riskless position because the net debit ((2 + 1) − (7 + 5½) = net debit of 9½) is less than the exercise price differential (60 − 50 = 10). Thus, the investor has locked in a profit of $50 (½ × 100). *See* CBOE Approval Order, *supra* note 7, at footnote 22.

margin of 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a margin requirement slightly higher than 50% of the debit typically incurred in establishing such a position.[21] Under the proposal, a long box spread position would be allowed market value for margin equity purposes of not more than 100% of the aggregate difference in the exercise prices of the options.

E. Cash Account Treatment of Butterfly Spreads, Box Spreads, and Other Spreads

The proposal would make butterfly and box spreads in cash-settled, European-style options eligible for the cash amount. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. To qualify for carrying in the cash account, the butterfly spreads and box spreads must meet the specifications contained in the proposal's definitions of those terms,[22] and must be comprised of options that are listed or guaranteed by the carrying broker-dealer. In addition, the long options must be held in, or purchased for, the account on the same day.

For long butterfly spreads and long box spreads, the proposal would require full payment of the net nebit that is incurred when the spread strategy is established. According to NASD Regulation, full payment of th enet debit incurred to establish a long butterfly or box spread will cover any potential risk to the carrying broker-dealer.[23]

Short butterfly spreads generate a credit balance when establish (*i.e.,* the proceeds from the sale of short option components exceed the cost of purchasing long option components). However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. To eliminate the risk to the broker-dealer carrying the short butterfly spread, the proposal will require that an amount equal to the maximum risk be held or deposited in the account in the form of cash or cash equivalents.[24] The maximum potential risk in a short butterfly spread comprised of all options is the aggregate difference be between the two lowest exercise prices.[25] With respect to short butterfly spreads comprised of put options, the maximum potential risk is the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components could be applied towards the requirement.

NASD Regulation's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and specify requirements that are the same as the cash account requirements for butterfly spreads.[29] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that it incurred when the spread strategy is established.[30] For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement. Generally, long and short box spreads would not be recognized for margin equity purposes; the proposal would allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer.

G. Margin Requirements for Short Put Options

NASD Rule 2520(f)(2)(D)(i) currently provides that the minimum required margin for a short listed put option is an amount equal to the option premium plus a percentage of the current value of the underlying instrument. The minimum required margin for a short OTC put option is an amount equal to a percentage of the current value of the underlying component. According to NASD Regulation, the NASD's current rule creates a margin requirement for a short put option even when the price of the underlying instrument rises above the exercise price of the put and the risk associated with the put option has decreased because the option is out-of-the-money. NASD Regulation proposes to amend the margin requirement for short put options to provide a minimum margin requirement more in line with the risk associated with the option. Specifically, NASD Regulation proposes to amend NASD Rule 2520(f)(2)(D) to provide the minimum margin requirement for a short listed put option will be an amount equal to the current value of the option plus a percentage of the option's aggregate exercise price. The minimum margin required for a short OTC put option would be an amount equal to a specified percentage of the options' aggregate exercise price.

Short box spreads also generate a credit balance when established. This credit is nearly equal to the total debit

[21] Using the example in the preceding footnote, the margin required (50% × (60 − 50) = 5) would be slightly higher than 50% of the net debit (50% × 9½ = 4¾). *See* CBOE Approval Order, *supra* note 7, at footnote 23.

[22] *See* notes 9 and 10, *supra.*

[23] For example, to create a long butterfly spread comprised of all options, an investor may be long 1 XYZ Jan 45 Call @ 6, short 2 XYZ Jan 50 Calls @ 3 each, and long 1 XYZ Jan 55 Call @ 1. The maximum risk for this long butterfly spread is the next debit incurred to establish the strategy ((3 + 3) - (6 + 1) = net debit of 1). Under the proposed rule change, the investor would be required to pay the net debit, or $100 (1 × 100). *See* CBOE Approval Order, *supra* note 7, at footnote 25.

[24] An escrow agreement could be used as a substitute for cash or cash equivalents if the agreement satisfies certain criteria. For short butterfly spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not not less than the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate differrence between the two highest exercise prices with respect to short butterfly spreads comprised of put options and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

[25] For example, an investor may be short 1 XYZ Jan 45 Call @ 6, long 2 XYZ Jan 50 Calls @ 3 each, and short 1 XYZ Jan 55 Call @ 1. Under the proposed rule change, the maximum risk for this short butterfly spread, which is comprised of call options, is equal to the difference between the two lowest exercise prices (50 - 45 = 5). If the net credit received from the sale of short option components ((6 + 1) - (3 + 3 = 1) is applied, the investor is required to deposit an additional $400 (4 × 100). Otherwise, the investor would be required to deposit $500 (5 × 100). *See* CBOE Approval Order, *supra* note 7, at footnote 27.

[29] *See supra,* Section II.E., ''Cash Account Treatment of Butterfly Spreads, Box Spreads, and Other Spreads.'' The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[30] As discussed above in Section II.D., ''Extension of Credit on Long Box Spread in European-Style Options,'' the margin requirement for a long box spread made up of European-style options is 50% of the aggregate difference in the two exercise prices.

(loss) that, in the case of a short box spread, will accrue to the account if held to expiration. The proposed rule change will require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.[26] The net credit received from the sale of the short option components may be applied towards the requirement; if applied, only a small fraction of the total requirement need be held or deposited.[27]

In addition to butterfly spreads and box spreads, the proposal will permit investors to hold in their cash accounts other spreads made up of European-style, cash-settled stock index options or stock index warrants. A short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style, cash-settled index option or stock index warrant was held in, or purchased for, the account on the same day.[28] The long and short positions making up the spread must expire concurrently, and the long position must be paid in full. Lastly, the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

[26] As a substitute for cash or cash equivalents, an escrow agreement could be used if it satisfies certain criteria. For short box spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the exercise prices, and that the bank will promptly pay the member such amount in the event the account is assigned an exercise notice on either short option.

[27] For example, to create a short box spread, an investor may be short 1 XYZ Jan 60 Put @ 5½ and long 1 XYZ Jan 60 Call @ 2 (''buy side''), and short 1 XYZ Jan 50 Call @ 7 and long 1 XYZ Jan 50 Put @ 1 (''sell side''). As required by NASD Regulation's proposed definition of ''short box spread (*supra* note 10),'' the buy side exercise price exceeds the sell side exercise price. In this example, the maximum risk for the short box spread is equal to the difference between the two exercise prices (60 − 50=10). If the net credit received from the sale of short option components ((5½+7) − (2+1)=net credit of 9½) is applied, the investor is required to deposit an additional $50 (½×100). Otherwise, the investor would be required to deposit $1,000 (10×100). *See* CBOE Approval Order, *supra* note 7, at footnote 29.

[28] Under the proposal, a long warrant may offset a short option contract and a long option contract may offset a short warrant provided they have the same underlying component or index and equivalent aggregate current underlying value. If the long position is not listed, it must be guaranteed by the carrying broker-dealer; otherwise the short position is not eligible for the cash account and must be margined separately pursuant to NASD Rule 2520(f)(2)(D). *See* Amendment No. 1, *supra* note 3.

F. Margin Account Treatment of Butterfly and Box Spreads

The NASD's margin rules presently do not recognize butterfly spreads for margin purposes. Under NASD's current margin rules, the two spreads (bullish and bearish) that make up a butterfly spread each must be margined separately. NASD Regulation believes that the two spreads should be viewed in combination, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

H. Maintenance Margin Requirements for Stock Positions Held With Options Positions

NASD Regulation proposes to recognize, and establish reduced maintenance margin requirements for five options strategies designed to limit the risk of a position in the underlying component.[31] The strategies are: (1) Long Put/Long Stock; (2) Long Call/Short Stock; (3) Conversion; (4) Reverse Conversion; and (5) Collar. Although the five strategies are summarized below in terms of stock positions held in conjunction with an overlying option (or options), the proposal is structured to apply also to components that underlie index options and warrants. For example, these same maintenance margin requirements will apply when these strategies are used with a stock basket underlying index options or warrants. Proposed NASD Rule 2520(f)(2)(G)(v) will define the five strategies and set forth the respective maintenance margin requirements for the stock component of each strategy.[32]

1. Long Put/Long Stock

The Long Put/Long Stock hedging strategy requires an investor to carry in an account a long position in the component underlying the put option, and a long put option specifying equivalent units of the underlying component. This strategy is designed to limit downside risk in the underlying stock while the put is held. The put holder retains the right to sell stock at the strike price through the expiration of the put. The maintenance margin requirement for the Long Put/Long Stock combination would be the lesser of: (a) 10% of the put option aggregate exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (b) 25% of the current market value of the long stock position.[33]

2. Long Call/Short Stock

The Long Call/Short Stock hedging strategy requires an investor to carry in an account a short position in the component underlying the call option, and a long call option specifying the equivalent units of the underlying component. This strategy is designed to limit the risk associated with upside appreciation in the underlying stock during the life of the call. The call holder retains the right to buy the stock at the strike price through the expiration of the call. For a Long Call/Short Stock combination, the maintenance margin requirement would be the lesser of: (a) 10% of the call option aggregate exercise price, plus 100% of any amount by which the call option is out-of-the-money; or (b) the maintenance margin requirement on the short stock position as specified in NASD Rule 2520(c).[34]

3. Conversion (Long Stock/Long Put/Short Call)

A ''Conversion'' is a long stock position in conjunction with a long put and a short call. For a Conversion to qualify as hedged, the long put and the short call must have the same expiration and exercise price. The short call is covered by the long stock, and the long put is a right to sell the stock at a predetermined price—the exercise price

[31] Generally, NASD Rule 2520(c) requires maintenance margin of 25% for all securities ''long'' in an account. For each stock carried short that has a current market value of less than $5 per share, the maintenance margin is $2.50 per share or 100% of the current market value, whichever is greater. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share or 30% of the current market value, whichever is greater.

[32] NASD Regulation's proposal provides maintenance margin relief for the stock component (or other underlying instrument) of the five identified strategies. A reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the NASD does not possess independent authority to lower the initial margin requirement for the stock.

[33] For example, if an investor is long 100 shares of XYZ @ 52 and long one XYZ Jan 50 Put @ 2, the required margin would be the lesser of ((10%×50)+(100%×2)=7) or (25%×52=13). Therefore, the investor would be required to maintain margin equal to at least $700 (7×100). *See* CBOE Approval Order, *supra* note 7, at footnote 34.

[34] As discussed in note 29, *supra,* NASD Rule 2520(c) provides a maintenance margin requirement of the greater of $2.50 per share or 100% of the current market value for each stock carried short that has a current market value of less than $5 per share. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share or 30% of the current market value, whichever is greater. Thus, for an investor who is short 100 shares of XYZ @ 48 and long 1 XYZ Jan 50 Call @ 1, the proposed margin would be the lesser of ((10%×50)+(100%×2)=7) or (30%×48=14.4). Therefore, the investor would be required to maintain margin equal to at least $700 (7×100). *See* CBOE Approval Order, *supra* note 7, at footnote 35.

of the long put. Thus, regardless of any decline in market value, the stock position, in effect, is worth no less than the exercise price of the put.

Current NASD margin rules specify that no maintenance margin would be required on the short call option because it is covered, but the underlying long stock position would be margined according to the current maintenance margin requirement (*i.e.,* 25% of the current market value).[35] Under the proposed rule change, the maintenance margin requirement for a Conversion would be 10% of the aggregate exercise price.[36]

4. Reverse Conversion (Short Stock/ Short Put/Long Call)

A ''Reverse Conversion'' is a short stock position held in conjunction with a short put and a long call. As with the Conversion, the short put and long call must have the same expiration date and exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price; in effect, the short position is valued at no more than the call exercise price. Under the proposed rule change, the maintenance margin requirement for a Reverse Conversion would be 10% of the aggregate exercise price, plus any in-the-money amount (*i.e.,* the amount by which the exercise price of the short put exceeds the current market value of the underlying stock position).[37]

5. Collar (Long Stock/Long Put/Short Call)

A ''Collar'' is a long stock position held in conjunction with a long put and a short call. In a Collar, as compared to a Conversion, the exercise price of the long put is lower than the exercise price of the short call. Therefore, the options positions in a Collar do not constitute a pure synthetic short stock position. The maintenance margin for a Collar under the proposed rule change would be the lesser of: (a) 10% of the long put aggregate exercise price, plus 100% of any amount by which the long put is out-of-the-money; or (b) 25% of the short call aggregate exercise price.[38] Current NASD margin requirements specify that the stock may not be valued at more than the call exercise price.

I. Determination of Value for Margin Purposes

The proposal would revise NASD Rule 2520(f) to allow the extension of credit on certain long-term options and warrants (*i.e.,* stock options, stock index options, and stock index warrants that are more than nine months from expiration).[39] Currently, NASD Rule 2520(f) does not allow certain long term options or warrants to have market value for margin equity purposes. The revision would allow options and warrants eligible for loan value under proposed NASD Rule 2520(f) to have market value for margin purposes. This change is designed to ensure that the value of the marginable option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[40] which requires, among other things, that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will promote the safety and soundness of member firms and is consistent with the rules and regulations of the Federal Reserve Board because it is designed to prevent the excessive use of credit for the purpose or carrying of securities, pursuant to Section 7(a) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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, as amended.

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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2

For the reasons discussed below, the commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities association. In particular, the commission finds that the proposed rule change, as amended, is consistent with the Section 15A(b)(6)[41] requirements that the rules of a national securities association be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by revising NASD Regulation's margin requirements to better reflect the risk of certain hedged options strategies.[42]

Specifically, the Commission believes that it is appropriate for NASD Regulation to allow member firms to extend credit on certain long term options and warrants, and that such practice is consistent with Regulation T. In 1996, the Federal Reserve Board amended Regulation T to enable the SROs to adopt rules permitting the margining of options.[43] As noted above, the NASD rules approved in this order, which will permit the margining of options under the grant of authority from the Federal Reserve Board, are

[35] For example, for an investor who is long 100 shares of XYZ @ 48, long one XYZ Jan 50 Put @ 2, and short one XYZ Jan 50 Call @ 1, the current maintenance margin on the long stock position would be $1,200 ((25%×48)×100). However, if the price of the stock increased to 60, NASD rules currently specify that the stock may not be valued at more than the short call exercise price. Thus, the maintenance margin on the long stock position would be $1,250 ((25%×50)×100). The writer of the call option cannot receive the benefit (*i.e.,* greater loan value) of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price of the long position. *See* CBOE Approval Order, *supra* note 7, at footnote 36.

[36] For example in the preceding footnote, where the investor was long 100 shares of XYZ, @ 48, long 1 XYZ Jan 50 Put @ 2, and short 1 XYZ Jan 50 Call @ 1, the proposed maintenance margin requirement for the Conversion strategy would be $500 ((10%×50)×100). *See* CBOE Approval Order, *supra* note 7, at footnote 37.

[37] The seller of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underling component would be purchased (the short position in the Reverse Conversion effectively closed) at the exercise price, even if the current market price is lower. To recognize the lower market value of a component, the short put in-the-money amount is added to the requirement. For example, an investor holding a Reverse Conversion may be short 100 shares of XYZ @ 52, long one XYZ Jan 50 Call @ 2 ½, and short one XYZ Jan 50 Put @ 1 ½. If the current market value of XYZ stock drops to 30, the maintenance margin would be $2,500 ((10% × 50) + (50 − 30)) × 100. *See* CBOE Approval Order, *supra* note 7, at footnote 38.

[38] To create a Collar, an investor may be long 100 shares of XYZ @ 48, long 1 XYZ Jan 45 Put @ 4, and short 1 XYZ Jan 50 Call @ 3. The maintenance margin requirement would be the lesser of ((100% × 45) + 3 = 7½) or (25% × 50 = 12½). Therefore, the investor would need to maintain at least $750 (7½ × 100) in margin. *See* CBOE Approval Order, *supra* note 7, at footnote 39.

[39] *See* Amendment No. 1, *supra* note 3.

[40] 15 U.S.C. 78*o*–3(b)(6).

[41] 15 U.S.C. 78*o*–3(b)(6).

[42] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(c)(f).

[43] *See* note 6, *supra.*

substantially identical to rules adopted recently by the NYSE and the CBOE.[44]

The Commission believes that it is reasonable for NASD Regulation to restrict the extension of credit to long term options and warrants. The Commission believes that by limiting loan value to long term options and warrants, the proposal will help to ensure that the extension of credit is backed by collateral (*i.e.,* the long term option or warrant) that has sufficient value.[45] Because the expiration dates attached to options and warrants make such securities wasting assets by nature, it is important that NASD Regulation restrict the extension of credit to only those options and warrants that have adequate value at the time of the purchase, and during the term of the margin loan.[46]

The Commission believes that the proposed margin requirements for eligible long term options and warrants are reasonable. For long term listed options and warrants, the proposal requires that an investor deposit and maintain margin of not less than 75% of the long term OTC option's or warrant's current market value. For long term OTC options and warrants, an investor must deposit and maintain margin of not less than 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.,* intrinsic value).[47] The Commission notes that the proposed margin requirements are more stringent than the current Regulation T margin requirements for equity securities (*i.e.,* 50% initial margin and 25% maintenance margin).

The Commission recognizes that because current NASD rules prohibit loan value for options, increases in the value of long-term options cannot contribute to margin equity (*i.e.,* appreciated long term options cannot be used to offset losses in other positions held in a margin account). Consequently, some customers may face a margin call or liquidation for a particular position even though they concurrently hold a long term option that has appreciated sufficiently in value to obviate the need for additional margin equity. The NASD's proposal would address this situation by allowing loan value for long term options and warrants.

The Commission believes that it is reasonable for the NASD to afford long term options and warrants loan value because mathematical models for pricing options and evaluating their worth as loan collateral are widely recognized and understood.[48] Moreover, some creditors, such as OCC, extend credit on options as part of their current business.[49] The Commission believes that because option market participants possess significant experience in assessing the value of options, including the use of sophisticated models, it is appropriate for them to extend credit on long term options and warrants.

Furthermore, since 1998, lenders other than broker-dealers have been permitted to extend 50% loan value against long listed options under Regulation U.[50] The Commission understands that the current bar preventing broker-dealers from extending credit on options may place some NASD member firms at a competitive disadvantage relative to other financial service firms. By permitting NASD members to extend credit on long term options and warrants, the proposal should enable NASD members to better serve customers and offer additional financing alternatives.

The Commission believes that it is appropriate for NASD Regulation to recognize the hedged nature of certain combined options strategies and prescribe margin and cash account requirements that better reflect the true risk of the strategy. Under current NASD rules, the multiple positions comprising an option strategy such as a butterfly spread must be margined separately. In the case of a butterfly spread, the two component spreads (bull spread and bear spread) are margined without regard to the risk profile of the entire strategy. The net debit incurred on the bullish spread must be paid in full, and margin equal to the aggregate exercise price differential must be deposited for the bearish spread.

The Commission believes that the revised margin and cash account requirements for butterfly spread and box spread strategies are reasonable measures that will better reflect the risk of the combined positions. Rather than view the butterfly and box spread strategies in terms of their individual option components, the NASD's proposal would take a broader approach and require margin that is commensurate with the risk of the entire hedged position. For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[51] For short butterfly spreads and short box spreads, the initial and maintenance margin required would be equal to the maximum risk potential. Thus, for short butterfly spreads comprised of call options, the margin must equal the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the margin must equal the aggregate difference between the two highest exercise prices. For short box spreads, the margin must equal the aggregate difference in the two exercise prices involved. In each of these instances, the net credit received from the sale of the short option components

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[44] *See* CBOE Approval Order and NYSE Approval Order, *supra* note 7.

[45] The value of an option contract is made up of two components: intrinsic value and time value. Intrinsic value, or the in-the-money-amount, is an option contract's arithmetically determinable value based on the strike price of the option contract and the market value of the underlying security. Time value is the portion of the option contract's value that is attributable to the amount of time remaining until the expiration of the option contract. The more time remaining until the expiration of the option contract, the greater the time value component.

[46] For similar reasons, the Commission believes that it is appropriate for the NASD to permit the extension of credit on long box spreads comprised entirely of European-style options that are listed or guaranteed by the carrying broker-dealer. Because the European-style long box spread locks in the ability to buy and sell the underlying component or index for a profit, and all of the component options must be exercised on the same expiration day, the Commission believes that the combined positions have adequate value to support an extension of credit.

[47] *See* Amendment No. 1, *supra* note 3.

[48] For example, the Black-Scholes model and the Cox Ross Rubinstein model are often used to price options. *See* F. Black and M. Scholes, *The Pricing of Options and Corporate Liabilities,* 81 Journal of Political Economy 637 (1973), and J. C. Cox, S. A. Ross, and M. Rubinstein, *Option Pricing: A Simplified Approach,* 7 Journal of Financial Economics 229 (1979).

[49] In this regard, the Commission notes that the CBOE, in its options margin proposal, stated that ''[t]he fact that market-maker clearing firms and the Options Clearing Corporation extend credit on long options demonstrates that long options are acceptable collateral to lenders. In addition, banks have for some time loaned funds to market-maker clearing firms through the Options Clearing Corporation's Market Maker Pledge Program.'' *See* CBOE Approval Order, *supra* note 7.

[50] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (January 8, 1998), 63 FR 2806 (January 16, 1998). In adopting the final rules that permitted non-broker-dealer lenders to extend credit on listed options, the Federal Reserve Board stated that it was: [A]mending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U [12 CFR 221 *et seq.*].

The Federal Reserve Board first proposed margining listed options in 1995. *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995) (''[T]he Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes'').

[51] However, for long box spreads made up of European-style options, the margin requirement is 50% of the aggregate difference in the two exercise prices.

may be applied towards the requirement.

The Commission believes that the proposed margin and cash account requirements for butterfly spreads and box spreads are appropriate because the component options positions serve to offset each other with respect to risk. The proposal takes into account the defined risk of these strategies and sets margin requirements that better reflect the economic reality of each strategy. As a result, the margin requirements are tailored to the overall risk of the combined positions.

For similar reasons, the Commission approves of the proposed cash account requirements for spreads made up of European-style cash-settled stock index options and stock index warrants. Under the proposal, a short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style cash-settled stock index option or stock index warrant was held in, or purchased for, the account on the same day. In addition, the long and short positions must expire concurrently, and the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The Commission believes that it is appropriate for NASD Regulation to revise the maintenance margin requirements for several hedging strategies that combine stock positions with options positions. The Commission recognizes that hedging strategies such as the Long Put/Long Stock, Long Call/Short Stock, Conversion, Reverse Conversion, and Collar are designed to limit the exposure of the investor holding the combined stock and option positions. The proposal would modify the maintenance margin required for the stock component of a hedging strategy. For example, the stock component of a Long Put/Long Stock combination currently is margined without regard to hedge provided by the long put position (*i.e.,* the 25% maintenance margin requirement for the stock component is applied in full). Under the proposal, the maintenance margin requirement for the stock component of a Long Put/Long Stock strategy would be the lesser of: (1) 10% of the put option aggregate exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (2) 25% of the current market value of the long stock position. Although for some market values the proposed margin requirement would be the same as the current requirement, in may other cases it would be lower.[52]

The Commission notes that the proposed changes were reviewed carefully by the 431 Committee and the Options Subcommittee, which are comprised of industry participants who have extensive experience in margin and credit matters. In addition, as noted above, NASD Regulation's proposal is substantially identical to rules adopted by the CBOE and the NYSE, which the Commission approved.[53] In approving the CBOE's proposal, the Commission noted the CBOE's experience in monitoring the credit exposures of options strategies and the fact that the CBOE regularly examines the coverage of options margin as it relates to price movements in the underlying securities and index components.[54] Therefore, the Commission is confident that the proposed margin requirements are consistent with investor protection and properly reflect the risks of the underlying options positions.

The Commission notes that the margin requirements approved in this order are mandatory minimums. Therefore, an NASD member may freely implement margin requirements that exceed the margin requirements by adopted by NASD Regulation.[55] The Commission recognizes that the NASD's margin requirements serve as non-binding benchmarks, and that NASD members often establish different margin requirements for their customers based on a number of factors, including market volatity. The Commission encourages NASD members to continue to perform independent and rigorous analysis when determining prudent levels of margin for customers.

The Commission believes that it is appropriate for the NASD to revise Rule 2520(f) (1) and (2) to allow the market value of certain long term stock options, stock index options, and stock index warrants to have market value for margin equity purposes. Under the current terms of NASD Rule 2520(f) (1) and (2), options contracts are not deemed to have market value. Because NASD Regulation's proposal will allow extensions of credit on certain long term options and warrants, NASD Rule 2520(f) (1) and (2) must be revised to permit such marginable options and warrants to have market value for margin purposes. The Commission notes that unless NASD Rule 2520(f) (1) and (2) are revised to recognize the market value of the marginable options and warrants, the NASD's loan value proposal will be ineffective (*i.e.,* the market value of an appreciated marginable security would not be recognized or allowed to offset any loss in value of other securities held in the margin account).

The Commission also believes that it is reasonable for the NASD Regulation to define ''butterfly spread'' and ''box spread.'' These definitions will specify which multiple options positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatments. The Commission believes that it is important for the NASD to clearly define which options strategies are eligible for the proposed margin treatment.

Moreover, the Commission believes that it is reasonable for NASD Regulation to define the term ''escrow agreement,'' when used in connection with non cash-settled call or put options carried short, and when used in connection with cash-settled call or put options carried short, to establish clear requirements for both of these types of escrow agreements. The Commission believes that the proposed definitions will help to clarify the requirements for these types of escrow agreements.

The Commission also finds that the NASD's definition of the term ''stock index warrant'' is reasonable because it conforms an NASD rule to an existing NYSE rule.[56]

The Commission also believes that it is reasonable for NASD Regulation to revise its definition of ''current market value'' and ''current market price'' to provide that the terms ''current market value'' and ''current market price'' of an option, currency warrant, currency index warrant or stock index warrant are as defined in Section 220.2 of Regulation T. A linkage to the Regulation T definition should keep the NASD's definition equivalent to Regulation T without requiring a rule filing if the Federal Reserve Board revises its definition of Regulation T. In

[52] For example, for an investor who is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2, the margin required under the proposal would be $700—the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). In contrast, the current margin requirement would be $1,300 a difference of $600. *See* CBOE Approval Order, *supra* note 7, at footnote 63.

[53] *See* CBOE Approval Order and NYSE Approval Order, *supra* note 7.

[54] *See* CBOE Approval Order, *supra* note 7.

[55] In this regard, the Commission notes that NASD Rule 2520(d). ''Additional Margin,'' requires NASD members to: (1) review limits and types of credit extended to all customers; (2) formulate their own margin requirement; and (3) review the need for instituting higher margin requirements, mark-to-markets and collateral deposits than are required by NASD Rule 2520 for individual securities or customer accounts.

[56] *See* NYSE Rule 414(a).

addition, the Commission believes that it is reasonable for NASD Regulation to move its definitions of ''current market value,'' ''current market price,'' ''exercise settlement amount,'' ''aggregate exercise price,'' and ''aggregate current index value'' from NASD Rule 2520 to NASD Rule 2522 for ease of reference purposes so that all the definitions relating to transactions in options, currency warrants, currency index warrants and stock index warrants will be located under NASD Rule 2522. The Commission believes that NASD members and other market participants will find the consolidated margin definitions easier to locate and use.

Further, the Commission believes that it is reasonable for NASD Regulation to modify NASD Rule 2450(f)(2)(D) to provide that the minimum customer margin requirement for a short put on a listed equity will be the current value of the put plus 10% of the put's aggregate exercise price; and that the minimum customer margin requirement for a short put on an OTC equity will be 10% of the put's aggregate exercise price. The proposed change will make NASD Regulation's treatment of short equity put options consistent with the CBOE and NYSE treatment of short equity put options.[57]

The revisions to NASD margin rules will significantly impact the way NASD members calculate margin for options customers. The Commission believes that it is important for NASD Regulation to be adequately prepared to implement and monitor the revised margin requirements. To best accommodate the transition, the Commission believes that a phase-in period is appropriate. Therefore, the approved margin requirements shall not become effective until the earlier of February 26, 2001 or such date NASD Regulation represents in writing to the Commission that NASD Regulation is prepared to fully implement and monitor the approved margin requirements.

The Commission expects NASD Regulations to issue a notice to members that discusses the revised margin provisions and provides guidance to members regarding their regulatory responsibilities. The Commission also believes that it would be helpful for NASD Regulation to publicly disseminate (*i.e.,* via web site posting) a summary of the most significant aspects of the new margin rules and provide clear examples of how various options positions will be margined under the new provisions.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal is substantially identical to proposals filed by the CBOE and NYSE, which the Commission approved previously.[58] The Commission also finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 strengthens NASD Regulation's proposal by, among other things, clarifying the requirements for stock index option and stock index warrant spreads carried in a cash account. Specifically, NASD Rule 2520(f)(2)(M)(ii)d, as amended, provides that if the long stock index option or warrant position is not listed, it must be guaranteed by the carrying broker-dealer or the offsetting short position would not be eligible for the cash account and would be margined separately pursuant to NASD Rule 2520(f)(2)(D). Because this change conforms the NASD's rule to the CBOE and NYSE rules that were approved by the Commission,[59] the change raises no new material regulatory issues. In addition, Amendment No. 1 makes technical corrections, clarifies the purpose of proposed definitions, and indicates that the minimum amount of margin that must be maintained in various hedged strategies is the aggregate exercise price (rather than the exercise price). Amendment No. 2 strengthens the NASD's proposal by making technical corrections and by clarifying the definitions of ''American-style option,'' and ''escrow agreement,'' as used in connection with cash settled instruments.

Based on the above, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[60] to accelerate approval of the proposal and Amendment Nos. 1 and 2 to the proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2 are 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–00–15 and should be submitted by December 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[61] that the proposed rule change (SR–NASD–00–15), as amended, is approved. The approved margin requirements shall become effective the earlier of February 26, 2001 or such date the Association represents in writing to the Commission that the Association is prepared to fully implement and monitor the approved margin requirements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[62]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–30196 Filed 11–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43597; File No. SR–NSCC–00–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Automated Customer Account Transfer Services Procedures

November 20, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 28, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 25, 2000, amended the proposed rule change as described in

[57] *See* CBOE Rule 12.3(c)(5) and NYSE Rule 431(f)(2).

[58] *See* CBOE Approval Order and NYSE Approval Order, *supra* note 7.

[59] *Id.*

[60] 15 U.S.C. 78s(b).

[61] 15 U.S.C. 78s(b)(2).

[62] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies NSCC's rules and procedures pertaining to acceptance procedures for partial accounts, initiating partial account transfers, and reclaim transfer procedures in the Automated Customer Account Transfer Service (''ACAT Service'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's ACAT Service facilitates the automated transfer of customer accounts between members.[4] In operation since 1985, the ACAT Service was designed to complement the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD'') rules that require NYSE and NASD members to use automated clearing agency customer account transfer services and to affect customer account transfers within specified timeframes.[5] Under the proposed rule change, NSCC proposes to make three enhancements to the ACAT Service rules and procedures.

The first enhancement relates to the rejection by Receiving Members of account assets transferred through the ACAT Service. Pursuant to section 8 of Rule 50, Receiving Members may not reject individual account assets but rather they may only accept or reject accounts in their entirety. The proposed rule change will modify Section 8 by providing a Receiving Member with the ability to either accept all assets in the account being transferred or to the extent permitted by the Receiving Member's designated examining authority accept only some of the assets in the account. NSCC proposes to implement these changes in January 2001 and will notify members through distribution of an Important Notice.

The second enhancement relates to transfer requests initiated by a Delivering Member. Under section 12(1), NSCC will reject a Delivering Member initiated transfer if the details contain an edit or format error. The proposed rule change will add language stating that NSCC will report to both the Delivering Member and the Receiving Member the details of the account if no edit or format errors in the asset data are discovered by NSCC.

NSCC also proposes to amend section 12(2) of Rule 50 relating to the treatment of reclaim procedures.[6] Currently, if a Receiving Member is going to reject any transfer request initiated by a Delivering Member, the Receiving Member must do so on the same day it receives the request. In connection with reclaim transfer requests only, NSCC has determined that Receiving Members need additional time to research these types of transfer requests. The proposed rule change will permit a Receiving Member to reject a reclaim transfer request no later than two business days following the day the reclaim transfer request is received. No action is required by the Receiving Member if it determines to accept the reclaim transfer request. Settlement date for all reclaim transfer requests will be one business day following the day the Receiving Member accepts or is deemed to accept the reclaim transfer request. NSCC proposes to implement these changes to section 12(2) in January 2001. NSCC will notify members by Important Notice.

The third enhancement relates to the ability of Receiving Members to initiate transfers for partial customer accounts. Section 13 of Rule 50 currently provides that a Receiving Member may submit a request to a Delivering Member to initiate the transfer of a partial customer account. The Receiving Member's request is delivered by NSCC to the Delivering Member on the same day that it is received by NSCC. Each day NSCC produces a report that reflects all requests received by it for that day. The Delivering Member is not required to take any action if it determines not to respond.

Under the proposed rule change, section 13 will be revised to provide additional time for a Delivering Member to review a Receiving Member's request for a partial account transfer. NSCC will continue to produce a report reflecting outstanding transfer requests for a period not to exceed three days. NSCC will also require a Delivering Member to indicate a reason for any requests rejected by the member. Pending approval, NSCC plans to implement the revisions to section 13 in November 2000 and will notify members by Important Notices.

NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and the rules thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions and in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Industry groups, including the Executive Committee of the Securities Industry Association's Customer Account Transfer Division and the Investment Company Institute's Mutual Fund User Group, were advised of and concur with these modifications to NSCC's rules. No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency by designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For these reasons set forth below, the

[2] A copy of the text of NSCC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through NSCC. Please note that Exhibit A also contains rule text additions previously submitted by NSCC in SR–NSCC–00–05, which is pending review by the Commission.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] Rule 50 of NSCC's Rules and Procedures governs the use of the ACAT Service by members.

[5] NYSE Rule 412 and NASD Rule 11870.

[6] A reclaim occurs when cash or certain securities are mistakenly delivered as part of the ACAT Service transfer.

[7] 15 U.S.C. 78q–1(b)(3)(F).

Commission believes that NSCC's rule change is consistent with this obligation.

The rule change will permit NSCC to make certain enhancements to its ACAT Service that will afford members more specificity in the manner in which they accept, reject, or initiate transfers of customer account assets. These enhancements should improve the mechanism by which members transfer customer account assets and should improve the communication between members using the ACAT Service. Therefore, the Commission finds that the proposed rule change is consistent with NSCC's obligations to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit NSCC to implement it and members and their customers to benefit from these enhancements to the ACAT Service as soon as possible.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–11 and should be submitted by December 19, 2000.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–00–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz

Secretary.

[FR Doc. 00–30194 Filed 11–27–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000399]

East Gate Private Equity Fund III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that East Gate Private Equity Fund III, L.P., 2192 Fortune Drive San Jose California 95131, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). East Gate Private Equity Fund III, L.P. proposes to provide equity financing to Qixo, Inc., 2192 Fortune Drive San Jose California 95131. The financing is contemplated for working capital, the acquisition of machinery and equipment, and marketing.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because East Gate Cayman Corporation, an Associate of East Gate Private Equity Fund III, L.P., currently owns greater than 10 percent of Qixo, Inc. and therefore Qixo, Inc. is considered an Associate of East Gate Private Equity Fund III, L.P., as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 15, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–30264 Filed 11–27–00; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3305; Amendment #1]

State of Arizona

In accordance with notices received from the Federal Emergency Management Agency, dated November 8 and November 16, 2000, the above-numbered Declaration is hereby amended to include Pinal County and the Gila River Indian Community in the State of Arizona as a disaster area due to damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on October 21, 2000 and continuing through November 8, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Graham, Arizona may be filed until the specified date at the previously designated location. All other contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 26, 2000 and for economic injury the deadline is July 27, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 20, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–30262 Filed 11–27–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3295; Amendment #1]

State of California

In accordance with information received from the Federal Emergency Management Agency, dated November 9, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage caused by this disaster from November 13, 2000 to November 30, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 14, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 20, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–30263 Filed 11–27–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service; Performance Review Board Members

ACTION: Notice of members of the FY 2000 Performance Review Board.

SUMMARY: Section 4314© (4) of Title 5, U.S.C., requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2000 Performance Review Board for the U.S. Small Business Administration:

1. Bettie Baca, Counselor to the Administrator;
2. Charles Payne, General Counsel;
3. Monika Harrison, Deputy to the Associate Deputy Administrator for Entrepreneurial Development;
4. Kris Marcy, Chief Operating Officer;
5. Arnold Rosenthal, Assistant Administrator for Borrower and Lender Servicing;
6. Francisco Marrero, District Director (New Jersey);
7. Kerry Kirkland, Associate Deputy Administrator for Government Contracting and Business Development;
8. James Westbrooks, Assistant Administrator for Equal Employment Opportunity & Compliance;
9. Cory Whitehead, Deputy to the Associate Deputy Administrator for Management & Administration;
10. Bernetta Hayes, Associate Administrator for Communications and Public Liaison;
11. Gregory Walter, Deputy Chief Financial Officer;
12. Darryl Hairston, Deputy to the Associate Deputy Administrator for Government Contracting and Business Development;
13. Jane Merkin, Assistant Administrator for Congressional and Legislative Affairs;
14. Gail McDonald, National Ombudsman;
15. Robert Baskin, Associate Administrator for Field Operations;
16. Linda Williams; Associate Administrator for Procurement Policy and Liaison;
17. Aubrey Rogers, District Director (New York); and
18. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance.

Dated: November 17, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–30261 Filed 11–27–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3480]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: October 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 15, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.
U.S. Department of State,
Washington, D.C., October 26, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Israel.

The transaction described in the attached certification involves the transfer to Israel of technical information and manufacturing assistance for the production of AN/APG–68(V)XM Radar components, subassemblies and test equipment for the F–16 New Fighter Aircraft Program of Israel and Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 124–00.

[FR Doc. 00–30288 Filed 11–27–00; 8:45 am]

BILLING CODE 4710–25–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Larry P. Bevan, Assistant Director for Management Trade and Development Agency, 1621 N. Kent Street, Arlington, VA, 22209–2131 (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5), U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency; James Painter, Director, Office of Budget, U.S. Agency for International Development; Kathleen O'Hara, Deputy Director, Office of Procurement, Bureau of Management, U.S. Agency for International Development; and Andrew Luten, Deputy General Counsel, Office of the General Counsel, U.S. Agency for International Development.

Dated: November 21, 2000.

Larry P. Bevan,

Assistant Director for Management.

[FR Doc. 00–30179 Filed 11–27–00; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare a Supplement to and To Conduct Environmental Scoping on 1992 Final Environmental Impact Statement (FEIS) for Master Plan Development [Midfield Terminal Complex] at Indianapolis International Airport Located in Indianapolis, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to announce the intent of FAA to prepare a Supplement to the 1992 Final EIS at Indianapolis International Airport and conduct environmental scoping.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Supplement to the 1992 Final Environmental Impact Statement (FEIS)—Master Plan Development, Indianapolis International Airport, will be prepared. In 1992, a Final EIS (FEIS) and a Record of Decision (ROD) were completed for the proposed master plan development at Indianapolis International Airport (IND). While the majority of the development elements assessed in the 1992 FEIS have been complex, the midfield terminal complex and associated developments have not been constructed.

However, there have been a number of steps taken towards the development of the midfield terminal complex and associated developments. In November 2000, the Indianapolis Airport Authority (IAA) announced its intention to construct a midfield terminal complex and associated development. The FAA determined that it is appropriate to prepare a Supplement to the 1992 FEIS (SFEIS) because the IAA's proposed development contains more modifications from the same development elements proposed and assessed in the 1992 FEIS. Additional public scoping will be held in order that all significant issues related to the revised proposed actions are identified.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Snyder can be contacted at (847) 294–7538 (voice), (847) 294–7046 (facsimile) or by e-mail at prescott.snyder@faa.gov.

SUPPLEMENTARY INFORMATION: At the request of the Indianapolis Airport Authority, the FAA is preparing a Supplement to the 1992 Final Environmental Impact Statement. In November 2000, the Indianapolis Airport Authority (IAA) announced its intention to construct a midfield terminal complex and associated development at IND. The FAA determined that it was appropriate to prepare a Supplement to the 1992 FEIS (SFEIS) because the IAA's proposed development contains more modifications from the same development elements proposed and assessed in the 1992 FEIS.

The proposed developed assessed in the 1992 FEIS included nine primary actions of which, five have been completed and four have not yet been initiated. A number of miscellaneous actions were also assessed in the 1992 EIS. The elements and the status of the primary actions proposed in the 1992 FEIS are as follows:

Completed Actions

- Construct a new 11,200-foot replacement Runway 5L/23R with associated taxiway development
  - Develop a north taxiway to proposed Runway 5L/23R
  - Develop a south taxiway to proposed Runway 5L/23R
  - Develop a western taxiway parallel to existing Runway $^{14}/_{32}$
- Relocated the Indiana Power & Light Company power lines west of the airport
- Relocate Bridgeport Road
- Implement the airport's Part 150 noise abatement air traffic actions

Uncompleted Actions

- Construct a new midfield terminal complex
- Relocate the Airport Traffic Control Tower
- Construct a new midfield interchange at Interstate 70/Bridgeport Road (Midfield Terminal Interchange)
- Develop two cross-field taxiways
- Develop an additional high-speed taxiway exist for Runway 14/34 (Not being assessed in this Supplement).

While the majority of the actions assessed in the 1992 FEIS have been completed, the midfield terminal complex and associated developments have not been constructed.

However, there have been a number of steps taken towards the development of the midfield terminal complex and associated developments. These include: completion of environmental mitigation as detailed in the 1992 FEIS (*i.e.*, wetlands and ''Indiana Bat'' habitat); construction of replacement Runway 5L/23R, which opened the midfield site for development; partial removal of old Runway 5L/23R and relocation of navaids; and the preparation of additional studies to further define midfield terminal project (Peer Review Process of Midfield Terminal Studies, Terminal Area Master Plan, Indianapolis International Airport Midfield Terminal Project Definition Manual (Project Definition).

The SFEIS is not seeking environmental approval for any actions not related to the development and operation of the midfield terminal complex. Also, the development of an additional high-speed taxiway for Runway 14/32 is no longer on the airport's Airport Layout Plan (ALP) and is not being assessed as part of this evaluation.

The 1992 FEIS utilized the latest available planning design guidelines and forecasts of passengers and operations available at that time to define the design elements of the midfield terminal complex and associated developments. However, at that time, a number of the design elements were unavailable or were preliminary estimates. Since 1992, the Indianapolis Airport Authority has conducted a number of studies to refine and update the design elements of the midfield terminal complex. These studies, including the most recent Project Definition, have incorporated the latest planning guidelines regarding gate use factors, commercial/retail space, ticket check-in areas, baggage claim space, moving sidewalk requirements, aircraft gate requirements, parking and automobile requirements. The result is that most of the individual design elements from the 1992 FEIS have been refined and updated. However, the overall design objectives for the midfield terminal complex, built to meet the latest planning guidelines and to accommodate future passenger and aircraft demand, remains consistent with that stated in and assessed in the 1992 FEIS.

For this Supplement to the Final EIS (SFEIS), the Proposed Project consists of a new midfield terminal complex and associated development (relocation of Airport Traffic Control Tower, development of midfield terminal interchange, and construction of cross-field taxiways). The midfield terminal complex as defined in the 1992 FEIS was anticipated to open in 2001 and was designed to accommodate forecasted 2005 levels of enplaned passengers and operations; 5,041,000 passengers and 389,557 operations. The Indianapolis International Airport Midfield Terminal Project Definition Manual (Project Definition), completed in April 2000, updated the opening year

to 2005 and defined the design elements to accommodate 5,500,000 enplaned passengers, which was based on updated forecasts for 2010. Since the preparation of the Project Definition, the FAA Terminal Area Forecasts (TAF) for IND have been updated and report 5,653,123 enplaned passengers and 329,358 annual operations for 2010. The enplaned passenger projections in the TAF and the Project Definition are within three percent of each other. Because the TAF and Project Definition forecasts of enplaned passengers are similar and the TAF is the official forecast of enplaned passengers and annual operations for the facility, the TAF projections will be used throughout this analysis.

The 1992 FEIS definition of the midfield terminal complex anticipated the need for 45 air carrier gates and 28 commuter spaces to accommodate the aircraft fleet projected for 2005. The updated definition of the midfield terminal complex in the Project Definition has 40 air carrier gates and two turbo-prop commuter gates. The difference in the number of gates is due to changes in the terminal design, which reflects higher gate utilization, increased passenger service level requirements, and updated aircraft requirement assumptions to reflect changes in updated forecasts of fleet mix. The change in the number of turbo-prop gates is due to the switch nationally from turbo-prop aircraft to regional jet aircraft for commuter operations. This change was not fully anticipated when the forecasts for the 1992 FEIS were prepared. Consequently, the number of turbo-prop spaces was significantly reduced in the Project Definition to reflect updated forecasts for turbo-prop operations. The regional jets, which are replacing the turbo-prop aircraft, would utilize the same gates as air carrier jet aircraft.

The overall square footage (680,000 square feet) of the midfield terminal complex in the 1992 FEIS is smaller than the midfield terminal complex described in the Project Definition (1,210,200 square feet). The increase in terminal square footage is a function of the latest planning/design guidelines for air passenger terminals, which call for more passenger gate space, increased commercial/retail space, larger ticket check-in areas, more passenger bag claim space and bag make-up areas, moving sidewalk requirements, and aircraft gates to accommodate a variety of aircraft types. None of the analysis of environmental impacts in the 1992 FEIS was based on the square footage of the proposed midfield terminal complex; therefore none of the analysis is invalidated by more square footage. It is still anticipated that the existing terminal would be closed and demolished.

Updated automobile parking requirements for 2010 have resulted in an increase in the number of surface and garage parking spaces proposed for the midfield terminal complex. The updated parking requirements include a total of 15,800 parking spaces (2,800 garages and 13,000 surface), which is 4,800 more spaces than projected in the 1992 FEIS. The 1992 FEIS did not define the terminal area apron necessary for the midfield terminal complex. The Project Definition has identified the proposed layout and size of 572,150 square yards for the midfield terminal area apron.

The 1992 FEIS identified the need and assessed the impact for relocating the Airport Traffic Control Tower (ATCT) to a new location on the airfield. It did not however, identify the exact location for the ATCT. An ATCT siting study was completed in 2000 and found that among the five alternative locations Site B (southwest of the midfield terminal complex) was the preferred location. This location would not provide an unobstructed view of the southeastern end of Runway 14/32 as required by FAA Order 5300.13. In order to meet this requirement, one of several options will be needed to be implemented. These options include: The modification of the Fedex building, the relocation of the Fedex ground tower, the displacement of landing and takeoff thresholds by 300 feet for Runway 32, and the use of a variety of surveillance technologies (*e.g.,* closed-circuit television and ASD radar).

The automobile access to the midfield terminal complex was defined in general terms in the 1992 FEIS as being a new interchange off Interstate-70 near Bridgeport Road. No specific plans of the location or design were available in 1992. Since the preparation of the 1992 FEIS, the location and design of the midfield terminal interchange has been finalized and disclosed as part of the 1995 Federal Highway Administration Draft Environmental Assessment (EA). The FAA has not adopted, issued a finding, nor is it at this time a cooperating agency in the preparation of this draft EA. This SFEIS will assess the environmental impacts associated with the construction of the midfield terminal interchange at the location provided in the 1995 Draft EA. Service roads and interior circulation roadways were not specifically defined in the 1992 FEIS as well. This SFEIS will provide the environmental assessment of the location of the airfield service and interior circulation roadways.

In order to provide the necessary aircraft access between both sides of the airfield with a midfield terminal, two cross-field taxiways were proposed in the 1992 FEIS. To complete this, one existing taxiway was to be extended and another taxiway was to be constructed. The construction of a new taxiway has been completed (Taxiway P, 1996), but the extension to Taxiway R has not been completed due to the midfield terminal complex not being constructed. In addition to refining the design of the midfield terminal complex, the Project Definition has reassessed the operation of the cross-field taxiways. The Project Definition found that to provide efficient aircraft taxi-flow to and from the midfield terminal complex and across the airfield, a dual taxiway system would be preferred configuration. To accomplish this, the extension of Taxiway R as recommended in the 1992 FEIS would be completed and an additional cross-field taxiway just north of Taxiway R would be constructed. The proposed cross-field taxiways are still within the same general area assessed in the 1992 FEIS and would still include the extension of an existing taxiway and the construction of another cross-field taxiway.

The scope of this development is not significantly different from that described in earlier scoping completed for the 1992 FEIS that considered development of master plan. Nevertheless, new public scoping will be held in order that all significant issues related to the revised proposed actions are identified. Copies of a scoping document with additional detail can be obtained by contacting the FAA informational contact person identified above. Federal, State and local agencies and other interested parties are invited to make comments and suggestions to ensure that the full range of issues related to these proposed actions are addressed and all significant issues identified. These comments and suggestions should be received by the FAA informational contact person, identified above, by December 29, 2000.

Scoping by Mail

Scoping will be accomplished by correspondence. The FAA is soliciting comments by mail during the period November 24, 2000 through December 29, 2000. To ensure consideration in the preparation of the Supplement to the 1992 Final Environmental Impact Statement, written comments must be received by December 29, 2000. Late comments will be considered to the

extent practicable. Letters describing the proposed action and soliciting comments have been sent to appropriate federal, state, and local agencies, with information describing this proposal attached. Letters have also been sent to organizations that are known to have an interest in this proposal to provide them the opportunity to comment.

Issued in Des Plaines, Illinois, on November 16, 2000.

Pene' A. Beversdorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 00–30253 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: New Orleans International Airport, New Orleans, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposed new air carrier runway and a taxiway conversion to a general aviation runway at New Orleans International Airport. The existing north-south Runway 1/19 does not provide full instrument capabilities, nor is it feasible to expand the runway to meet design standards to provide these capabilities because of its proximity to Airport Access Road and the Interstate 10 overpass. While the proposed runway is to provide the capacity to meet near-term forecast peak-period demands when the airport is experiencing low visibility, it would also provide capacity to meet longer-term demands during all weather conditions. Some of the alternatives being considered are the no action; north/south parallel to existing Runway 1/19; as well as an 8 degree canted north/south alignment. The conversion of the east-west Taxiway G to a runway is intended to serve general aviation (GA) aircraft using the recently constructed northside facilities, allowing air traffic controller separation of lower-speed GA aircraft from higher performance aircraft. The alternatives being considered are the no action; the proposed taxiway to runway conversion, and others that will be identified in the EIS study. Included in the alternatives analysis will be the consideration of a proposed new Regional Airport.

Project History: In 1990, the FAA began preparation of an EIS to address construction of a new air carrier runway. However, successful completion of the 1990 draft EIS was never accomplished. In 1998, the City of New Orleans and the New Orleans Aviation Board began moving forward with the EIS for a new runway. The FAA selected a consultant and preparation of the EIS was begun in late 1999. The U.S. Army Corps of Engineers is a cooperating agency with the FAA on this EIS.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Environmental Specialist, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193–0640. Telephone (817) 222–5640.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of New Orleans and the New Orleans Aviation Board, will prepare an EIS for the proposed projects. The City of New Orleans and the New Orleans Aviation Board propose to construct a new air carrier runway, 8,000 ft long and 150 ft wide, and its associated taxiways; convert a east/west taxiway into a parallel Visual Flight Rule general aviation runway, 6,731 ft long and 100 ft wide, and construct a new parallel taxiway; and redesignate the existing runway 6/24 to a taxiway. The FAA intends to conduct a scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed projects. In addition to this notice, Federal, state, and local agencies, which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed projects, will be notified by letter of an agency scoping meeting to be held January 11, 2001 in the New Orleans Aviation Board Room at the airport from 9 a.m. to 12 p.m.

In order to notify the general public of the scoping process, a notice will be placed in a newspaper having general circulation in the project area describing the proposed projects. The newspaper notice will notify the public that scoping meetings will be held to gain their input concerning the proposed project. The scoping meetings are scheduled for: January 8, 2001 at the Jerusalem Temple, 1940 Ormond Blvd, Destrehan, LA; January 9, 2001 at the Pontchartrain Center, 4545 Williams Blvd in Kenner, LA; and January 10, 2001 at the Delgado Community College, Michael Williamson Gymnasium, 615 City Park Avenue in New Orleans, LA. Each of the three meetings will consist of a public workshop providing information about the proposed projects from 4 p.m. to 7 p.m., followed by an Open Forum to obtain public comments from 7 p.m. to 10 p.m. During the public workshops, participants will be able to view project related materials and speak with representatives of the FAA and their consulting team. The purpose of the Open Forum is to receive comments from the public and answer questions regarding the scope and process related to the EIS.

Issued on: November 17, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–30254 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Security Advisory Committee; Meeting

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 7, 2000, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, D.C. 20591, telephone 202–267–7622.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 7, at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, D.C. The agenda for the meeting will include: The Airport Security Improvement Act of 2000, Electronic Fingerprints, Checkpoint Security Screeners, Status of Work Groups, and Security Initiatives. The December 7 meeting is open to the public but attendance is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of

the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7622.

Issued in Washington, D.C., on November 16, 2000.

William S. Davis,

Acting Associate Administrator for Civil Aviation Security.

[FR Doc. 00–30258 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held December 13, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report from FAA: (a) Free Flight Phase 1 Operational Assessment Update; (b) End-to-End Checklist for Safe Flight 21 Applications; (c) FAA Primary en Route Radar Restructuring Program; (4) Report and Recommendation from the Free Flight Select Committee: (d) National Airspace System Concept of Operations; (e) Addendum 4: Free Flight Phase 2; (5) CNS/ATM Focus Team Data Link Report; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on November 15, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–30255 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Program Management Committee meeting to be held December 14, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review/Approve Summary of Previous Meeting; (3) Publication Consideration/Approval: (a) Final Draft, DO–160 Change 1, Section 8—Vibration, Section 20—Radio Frequency Susceptibility (Radiated and Conducted) and Appendix C—Change Coordinators (RTCA Paper No. 361–00/PMC–114, prepared by SC–135); (b) Final Draft, NAVSTAR GPS L5 Signal Specification, (RTCA Paper No. 362–00/PMC–115, prepared by SC–159); (c) Final Draft, Minimum Operational Performance Standards for Avionics Supporting Next Generation Satellite System (NGSS), (RTCA Paper No. 353–00/PMC–113, prepared by SC–165); (d) Final Draft, Application Airborne Conflict Management: Detection, Prevention & Resolution, (RTCA Paper No. 363–00/PMC–116, prepared by SC–186); (e) Final Draft, Guidelines for Approval of the Provision and Use of Air Traffic Services Supported by Data Communications (RTCA Paper No. 364–00/PMC–116, prepared by SC–189); (f) Final Draft, Minimum Operational Performance Standards for Aeronautical Mobile High Frequency Data Link (HFDL), (RTCA Paper No. 239–00/PMC–102, prepared by SC–188); (g) Final Draft, Change 3, DO–2004, Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT), (RTCA Paper No. 367–00/PMC–118, proposed by the National Oceanic and Atmospheric Administration); (h) Final Draft, Change 1, DO–210D, Minimum Operational Performance Standards for Geosynchronous Orbit Aeronautical Mobile Satellite Services (AMSS) Avionics (RTCA Paper No. 352–00/PMC–112, prepared by SC–165); (i) Final Draft, Government and Industry Guidelines and Concept for NAS Analysis and Redesign (RTCA Paper No. 351–00/PMC–111, prepared by SC–192); (4) Discussion: (A) Special Committee (SC)–192, National Airspace Review: User Recommendations for FAA Order 7400.2; Special Committee Status; (B) Special Committee 159, GPS: Status report on SC–159 GPS/UWB interference study; (C) Special Committee 187, Mode S Airborne Beacon & Data Link Systems: Committee Status; (D) Proposed New Special Committee 197, Committee for Nickel-Cadmium and Lead-Acid Batteries; Status Report; (E) Proposed New Special Committee to update DO–214, MOPS for Aircraft Audio Systems: Status Report; (5) Action Item Review: (a) Action Item 00–09, Proposed Revision to SC–181 TOR; (b) Action Item 00–10, Revised Document Guidance; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–30256 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held December 12–14, 2000, starting at 8:30 a.m. each day. The meeting will be held at NASA Langley Research Center (LaRC), Building 1219, Room 128, 1000 NASA Road, Hampton, VA 23681–2199.

The agenda will include: December 12: Plenary convenes: (1) Welcome and Introductory Remarks; (2) Review Agenda; (3) Working Group (WG)–1, Aircraft Cockpit Weather Display; Plenary reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG–1 on Activities; December 13: (6) Resolve Industry Comments on Flight Information Service-Broadcast (FIS–B) Minimum Aviation System Performance Standards (MASPS);

December 14: (7) Continue Review and Resolution of Industry Comments on FIS–B Minimum Aviation System Performance Standards (MASPS); (8) Review Issues and Action Items; (9) Address Future Work; (10) Other Business; (11) Date and Location of Next Meeting; (12) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–30257 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 2000, there were eight applications approved. This notice also includes information on one application, approved in August 2000, inadvertently left off the August 2000 notice as well as one application approved in September 2000 and inadvertently left off the September 2000 notice. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of El Paso, Texas.

Application Number: 00–02–U–00–ELP.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in This Decision: $5,502,927.

Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: October 1, 2005.

Class of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Project Approved for Use: Extend runway 4/22 1,000 feet.

Decision Date: August 14, 2000.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Golden Triangle Regional Airport Authority, Columbus, Mississippi.

Application Number: 00–02–C–00–GTR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue to be Approved Used in This Decision: $223,321.

Earliest Charge Effective Date: September 1, 2006.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitation of terminal entrance road.
Terminal building modifications.
Rehabilitation of general aviation overflow apron.
General aviation apron sealcoast.
Security gates replacement.
Taxiway porous friction course and striping.
Aircraft rescue and firefighting vehicle/firefighting equipment.
Renovation of crash, fire and rescue building.
Reconstruction runway lighting system.

Brief Description of Project Disapproved: Disadvantaged business enterprise program.

Determination: Disapproved. This project is not identified as planning or development eligible under the Airport Improvement Program (AIP). Rather, this project is an administrative requirement for obtaining an AIP grant. Therefore, the FAA has determined that the project does not meet the FCC project eligibility requirements, § 158.15.

Decision Date: September 27, 2000.

FOR FURTHER INFORMATION CONTACT: David Shumate, Jackson Airports District Office, (601) 664–9882.

Public Agency: Kalamazoo County, Kalamazoo, Michigan.

Application Number: 00–03–C–00–AZO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue to be Approved Used in This Decision: $3,298,376.

Earliest Charge Effective Date: January 1, 2001.

Estimated Charge Expiration Date: December 1, 2003.

Class of Air Carriers Not Required to Collect PFC'S: Non-scheduled Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Kalamazoo/Battle Creek International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal area study.
Acquire land—parcel 56.
Acquire land—parcel 55.
Rehabilitate taxiway B (north).
PFC consultant fees.
Replace airport wind cone.
Install precision approach path indicator on runway 35.
Commuter walkways.
Rehabilitate runway 17/35.
Rehabilitate runway 9/27.
Purchase runway snow sweeper.
Purchase runway snow blower.
Conduct airfield electrical study.
Rehabilitate runway 5/23.
Purchase runway snow plow.

Decision Date: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Gary J. Migut, Detroit Airports District Office, (734) 487–7278.

Public Agency: County of Okaloosa, Crestview, Florida.

Application Number: 00–01–C–00–VPS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $38,358,314.

Earliest Charge Effective Date: January 1, 2001.

Estimated Charge Expiration Date: July 1, 2028.

Class of Air Carriers not Required to Collect PFC's: (1) Charter operators that do not enplane or deplane passengers at the Oklaloosa Regional Airport's (VPS) main terminal; (2) charter operators that enplane less than 500 per year at VPS.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at VPS.

Brief Description of Projects Approved for Collection and Use:

Terminal building renovation and expansion.
Terminal aircraft parking apron expansion.
Widening of existing taxiway D–1.
Construct parallel taxiway D–2.
Expansion of terminal access roadway.
PFC program formulation and administrative costs.

Decision Date: October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Bud Jackman, Orlando Airports District Office, (407) 812–6331, ext. 22.

Public Agency: County of Mercer/Department of Transportation and Infrastructure, West Trenton, New Jersey.

Application Number: 00–01–I–00–TTN.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $15,000,000.

Earliest Charge Effective Date: January 1, 2001.

Estimated Charge Expiration Date: June 1, 2042.

Class of Air Carriers not Required to Collect PFC's: Air taxi commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Trenton—Mercer Airport.

Brief Description of Projects Approved for Collection:

Passenger terminal building and frontage road.
Apron.
Access road.
Non-revenue parking.

Decision Date: October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.

Application Number: 0–06–U–00–SBP.

Application Type: Use PFC revenue.

MPRC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $6,820,830.

Charge Effective Date: July 1, 1997.

Estimated Charge Expiration Date: July 1, 2015.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for use: Existing and future terminal development and construction.

Decision Date: October 13, 2000.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–3806.

Public Agency: City of Colorado. Springs, Colorado.

Application Number: 00–06—C–0–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $6,764,710.

Estimated Charge Expiration Date: April 1, 2003.

Earliest Charge Effective Date: January 1, 2001.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Sand Creek improvements.
Rehabilitate runway 17R/35L.
Complete taxiway H.
East unit connector.

Brief Description of Disapproved Project: Construct ground service equipment apron on east side of the east terminal unit.

Determination: Disapproved. The FAA has determined that this project is not AIP eligible, in accordance with paragraph 567(d) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b).

Decision Date: October 17, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: The Ports of Chelan and Douglas, Wenatchee, Washington.

Application Number: 00–03–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $240,687.

Earliest Charge Effective Date: February 1, 2001.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Land acquisition—Koether property.
Pavement overlay—apron and tie-down area.
Taxiway overlay.
Vacuum sweeper truck.
Construct taxiway F, taxiway F–2, and guidance signage.
Master plan update.
Acquire snow removal equipment; acquire aircraft rescue and firefighting vehicle.
Acquire land, parcels F–4 and F–5.

Decision Date: October 20, 2000.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: State of Connecticut, Department of Transportation, Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 00–06–U–00–SBP.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $6,257,923.

Charge Effective Date: February 1, 1999.

Charge Expiration Date: November 1, 1999.

Class of Air Carriers not Required to Collect PFC'S: No change from previous decision.

Brief Description of Porject Approved for Use: Construction of airport snow equipment storage and maintenance building.

Decision Date: October 26, 2000.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Fort Dodge Airport Commission, Fort Dodge, Iowa.

Application Number: 00–02–C–00–FOD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $18,896.

Earlist Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway 6/24 grooving and marking.
Update airport master plan.

Decision Date: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, Central Region Airports Division, (816) 329–2645.

Amendments to PFC Approvals

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–01–C–01–HRL, Harlingen, TX	08/14/00	$4,024,979	$4,166,654	10/01/01	01/01/02
97–06–C–01–PLN, Pellston, MI	10/04/00	$52,000	36,894	07/01/02	06/01/02
96–02–C–01–HDN, Hayden, CO	10/17/00	685,544	599,368	09/01/98	09/01/98
95–01–I–02–RIW, Riverton, WY*	10/18/00	371,485	1,055,040	12/01/04	10/01/23
98–02–U–01–RIW, Riverton, WY*	10/18/00	NA	NA	12/01/04	10/01/23
94–01–C–06–CVG, Covington, KY	10/23/00	32,718,000	33,305,000	11/01/95	05/01/96
95–02–C–03–CVG, Covington, KY	10/23/00	80,752,000	76,259,000	05/01/99	12/01/98
98–03–C–03–CVG, Covington, KY	10/23/00	22,005,000	23,146,000	09/01/99	08/01/99
98–04–C–03–CVG, Covington, KY	10/23/00	33,233,000	32,037,000	03/01/00	07/01/00
99–05–C–01–CVG, Covington, KY	10/23/00	15,050,000	14,325,000	08/10/00	08/01/00
92–01–C–01–DEN, Denver, CO*	10/30/00	2,330,743,321	3,137,099,200	12/01/04	10/01/23

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passsenger, effective April 1, 2001.

Issued in Washington, DC, on November 20, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–30252 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 28, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jeff Mulder, Airport Manager of the Outagamie County Airport at the following address: W6390 Challenger Drive, Suite 201, Appleton, Wisconsin 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Outagamie under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, (612) 713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 25, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Outagamie was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 23, 2001.

The following is a brief overview of the application.

PFC application number: 00–04–C–00–ATW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2001.

Proposed charge expiration date: March 1, 2008.

Total estimated PFC revenue: $5,889,967.00.

Brief description of proposed projects: Terminal Building Expansion, Master Plan Update, and Acquire Snow Removal Equipment.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Outagamie County Airport, W6390 Challenger Drive, Suite 201, Appleton, WI 54915.

Issued in Des Plaines, Illinois, on November 14, 2000.

Benito De Leon,

Manager, Planning and Programming Branch, Great Lakes Region.

[FR Doc. 00–30251 Filed 11–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a General Program Test Regarding Post-Entry Amendment Processing

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test program that allows importers to amend already filed entry summaries prior to liquidation by filing a post entry amendment on either an individual or quarterly basis, depending on the type of error being corrected. The notice invites public comments concerning any aspect of the test, informs interested members of the public how to participate in the test, and describes the procedure to be followed by test participants.

DATES: The test will commence no earlier than December 28, 2000 and will run for approximately one year. The test may be extended if warranted. Comments concerning this notice and all aspects of the announced test must be received on or before December 28, 2000.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue,

N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

Liquidation Procedure and Post Entry Amendment Filing

Liquidation is the process by which Customs, after receiving the entry summary filed by the importer/broker (hereafter referred to as the importer or importers) relative to an entry or release of merchandise into the United States, fixes the final appraisement, classification, and assessment of duties, taxes, and fees respecting that entered merchandise (19 U.S.C. 1500). Under 19 U.S.C. 1514, an importer can challenge a liquidation by filing a protest within 90 days of the date of liquidation. Under 19 U.S.C. 1501, Customs has the authority to reliquidate an entry after liquidation within the same 90-day period. Thus, under the Customs laws, a liquidation becomes final and binding on all parties after expiration of that 90-day period.

Under 19 U.S.C. 1520(c)(1), Customs, notwithstanding the finality of liquidation concept, is authorized to reliquidate an entry within one year of the date of liquidation to correct a mistake of fact, clerical error, or other inadvertence in the entry or liquidation. An importer seeking reliquidation under the statute must file a petition with evidence establishing the mistake, error, or inadvertence.

Customs has implemented a 314-day liquidation cycle, under which the liquidation of an entry typically occurs (approximately) 314 days after the date of entry. In order to allow importers to make amendments to entry summaries already filed but not yet liquidated, Customs implemented a process by which importers could submit letters for that purpose. These letters are called Supplementary Information Letters (SILs) and usually result, upon liquidation, in a refund of duties, taxes, and/or fees deposited or a bill for additional duties, taxes, and/or fees owed (if these amounts were not submitted with the letter). The SIL policy (for ABI users, see Administrative Message 97–0727, dated August 3, 1997; for non-ABI users contact the local port office), though effective initially, has produced an increased paperwork and manpower burden for both importers and Customs.

To address these problems and other concerns, Customs is announcing this test of the post entry amendment procedure. The test procedure, which may eventually replace the SIL policy, allows importers to continue to make amendments to already filed entry summaries prior to liquidation, and it reduces the workload on importers and Customs by providing for quarterly reporting of some amendments. This quarterly tracking report frees importers from the task of immediately filing a SIL upon each discovery of an error and frees Customs from dealing with these errors as they are reported on a daily or weekly basis. Under the test, some errors must be reported upon discovery and are thus not eligible for inclusion in a quarterly report.

(Customs notes that errors in entry summaries, depending on the circumstances, may be the result of simple mistake or culpable negligence, gross negligence, or even fraud. For purposes of this test, the term ''error'' will be used generically, without distinguishing between these concepts. (See however the ''Misconduct'' section which holds that all test participants are subject to the usual array of penalties, liquidated damages, etc., while participating in the test.))

Administrative Exemption and Errors of More Than $20

Under 19 U.S.C. 1321(a)(1), Customs is authorized to disregard a minimal difference between the amount of duties, taxes, and fees deposited at entry and that amount (plus interest if applicable) actually found to be due (at liquidation). This is one of several statutory administrative exemptions. Section 159.6 of the Customs Regulations (19 CFR 159.6), which implements 19 U.S.C. 1321(a)(1), provides that Customs will disregard a difference in these (deposited and actual due) amounts of less than $20. Entry summaries processed under the test that evidence revenue differences of less than $20 will be reported on a quarterly basis rather than an individual basis. Differences of $20 or more will continue to be reported to Customs upon discovery.

The Post Entry Amendment Procedure Generally

Customs recognizes that, in some circumstances, the 314-day liquidation cycle presents a problematic or undesirable suspension of time between the filing of the entry summary and the liquidation. While that suspension of time serves a beneficial purpose in most cases, an importer that discovers an error in the entry summary during that period may want or need to resolve that error sooner rather than later. The SIL policy has been shown to be less and less effective in handling the volume of pre-liquidation corrections sought by importers.

Like the SIL policy, the post entry amendment test procedure will allow importers to amend entry summaries prior to liquidation. Unlike the SIL policy, the test procedure allows importers to report certain amendments on a quarterly basis, a feature that provides convenience and saves time and resources. Thus, a post entry amendment is reported in one of two ways: (1) Through the filing of an individual amendment letter upon discovery of the error or (2) through the quarterly tracking report.

Both revenue related and non-revenue related errors may be reported through the test procedure. Revenue related errors are those that affect the amount of duties, taxes, and or fees applicable to an entry of merchandise. They involve two types: (1) Those of $20 or more and (2) those of less than $20. Non-revenue related errors are those that do not affect the amount of applicable duties, taxes, and or fees due; they pertain rather to errors in the information that must be provided in the entry summary, such as country of origin, quantity of the merchandise, and tariff number under the Harmonized Tariff Schedule of the United States (HTSUS). Non-revenue related errors also involve two types: (1) Those errors that must be reported to the Bureau of the Census (Census Bureau) under applicable law and Census Bureau rules and (2) those errors that need not be reported to the Census Bureau. (Guidelines for distinguishing between these kinds of errors are set forth under ''The Test Program'' section immediately below.)

The Test Program

Participation in the test is voluntary. There are no application procedures or eligibility requirements. To participate in the test, an importer need only follow the procedures set forth below to amend entry summaries (not informal entries) prior to liquidation. Under the test, all amendments must be reported through either an individual amendment letter or a quarterly tracking report, depending on the circumstances. The alternative to these procedures is to continue to file individual SILs for each correction or wait until the entry liquidates (typically about 314 days after the date of entry) to file a protest under 19 U.S.C. 1514 and Part 174 of the Customs Regulations (19 CFR Part 174) or, if appropriate, a petition for reliquidation under 19 U.S.C. 1520(c)(1). It is also noted that, if appropriate under the circumstances, the prior disclosure procedure under 19

U.S.C. 1592(c)(4) (and 19 CFR 162.74) is available to both participants in the test and non-participants. Under the SIL policy, all letters must be submitted immediately upon discovery of the error regardless of the amount of the under or overpayment.

The Filing Requirement

Under the test, whether filing an individual amendment letter or a quarterly tracking report, test participants must explain the errors and submit corrections of them for Customs evaluation. An individual amendment letter must be filed for: (1) Revenue related errors in the entry summary that result in either an overpayment or underpayment of duties, taxes, and or fees of $20 or more, or any amount relative to antidumping or countervailing duties, and (2) non-revenue related statistical information errors that must be reported to the Census Bureau. The quarterly tracking report must be used to report: (1) Revenue related errors that result in either an overpayment or underpayment of duties, taxes, and or fees of less than $20 and (2) non-revenue related statistical information errors that need not be reported to the Census Bureau.

When one entry summary exhibits two or more errors but only one of them meets the requirements for filing an individual amendment letter, the test participant must file an individual amendment letter that covers all the errors, including those that alone would require reporting on a quarterly tracking report.

A post entry amendment filed through an individual amendment letter, as required under the test, will contain a cover sheet obtained from a Customs database designed for that purpose, three copies of the letter describing the nature of the amendment (including the entry summaries and the error(s) involved) and setting forth the corrections, and any additional documentation needed to support the amendment, if appropriate. Each individual letter will be date-and time-stamped upon filing with Customs. (Whether the test participant (or its broker) or Customs personnel will perform this function will be determined by local port policy.)

An individual amendment letter can be filed at any time prior to liquidation of the one or more entries it covers (but promptly after discovery of the error). Customs will accept individual amendment letters that are filed after liquidation but will treat them as protests under 19 U.S.C. 1514 or, if appropriate, as evidence warranting reliquidation under 19 U.S.C. 1501.

A post entry amendment filed through the quarterly tracking report, as required under the test, will require the following information for each correction being reported: record number, entry number, filer, port, importer number, reason code (designating the reason for the change; codes are found in the Customs database), reason description, narrative description, duty difference, tax difference, fee difference, interest (if appropriate), input date, report date, and report type. This information must be submitted through the Customs database. The report must be filed within 15 calendar days from the last day of the quarter. The quarters are as follows: January 1–March 31; April 1–June 30; July 1 to September 30; and October 1–December 31. Each report should cover all errors (other than those required to be reported on an individual amendment letter) discovered during that quarter unless the liquidation of the entry summaries containing those errors has become final. (Customs emphasizes that participants must file the first quarterly tracking report under the test within 15 days of March 31, 2001.)

Again, if an entry covered in an individual amendment letter or a quarterly tracking report has been liquidated, the filing (of that letter or report) relative to that entry summary will be treated under 19 U.S.C. 1514 (protest) or 1501 (reliquidation), as appropriate.

Revenue Related Errors

Revenue related errors of $20 or more: For revenue related errors of $20 or more, or any dollar amount relative to antidumping or countervailing duty errors, test participants must file an individual amendment letter with Customs upon discovery of the error. Upon evaluation of an individual amendment letter, Customs will determine whether it agrees or disagrees with the amendment. If Customs agrees with the amendment, it will unset the liquidation cycle and issue a ''change liquidation.'' In that instance, Customs will issue either a refund or a bill in the amount it determines to be owed. If the participant tenders with the letter the correct amount of duties, taxes, fees, and/or interest due, Customs will not issue a bill. If Customs disagrees, determining that there is no error, it will unset the liquidation cycle and issue a ''no change'' liquidation without issuance of a refund or a bill. If Customs determines that there is another error, other than the one (or those) reported, it will liquidate accordingly. If the participant disagrees with Customs liquidation decision, it may file a protest under 19 U.S.C. 1514 or, if appropriate, a petition for reliquidation under 19 U.S.C. 1520(c)(1).

Revenue related errors of less than $20: Revenue related errors of less than $20 (except those relative to antidumping or countervailing duties, in which case an individual amendment letter is required) must be reported on a quarterly tracking report filed with Customs. Upon evaluation of a quarterly tracking report, Customs will determine whether the amendments are accurate but will not unset the liquidation cycle. Customs will exercise its administrative exemption authority and disregard duties, taxes, and/or fees found owing in an amount of less than $20. The amendments may be taken into account when Customs, in due course, liquidates the reported entries. If the test participant disagrees with the liquidation, it may file a protest under 19 U.S.C. 1514 or, if appropriate, a petition for reliquidation under 19 U.S.C. 1520(c).

Guidelines for processing revenue related errors: (a) Under $20/underpayment of duties, taxes, and or fees:

- Importer files quarterly tracking report.
- Customs does not unset liquidation cycle and issues a ''no change'' liquidation in due course.
- Upon liquidation, Customs disregards underpayments of less than $20 per entry summary.

(b) Under $20/overpayment of duties, taxes, and or fees:

- Importer files quarterly tracking report.
- Customs does not unset liquidation cycle and issues a ''no change'' liquidation in due course.
- After liquidation, importer may protest or petition for reliquidation.

(c) $20 or more/underpayment of duties, taxes, and or fees:

- Importer files individual amendment letter with or without additional duties, taxes, fees, and interest (if applicable) owed.
- Customs unsets liquidation cycle and liquidates accordingly.
- Customs issues bill for payment if necessary.
- After liquidation, importer may protest or petition for reliquidation.

(d) $20 or more/overpayment of duties, taxes, and or fees:

- Importer files individual amendment letter.
- Customs unsets liquidation cycle and liquidates accordingly.
- Customs issues refund.
- After liquidation, importer may protest or petition for reliquidation.

Non-Revenue Related Errors

Statistical information errors: The General Statistical Notes of the HTSUS (19 U.S.C. 1202) require importers to provide certain information in entry summaries, including the country of origin of the entered merchandise, a description of that merchandise, its quantity, any quota visa number, the HTSUS number, the value of the merchandise, and other charges and information regarding the merchandise (see also 19 CFR 141.61(e)). After receipt from the importer, this information is submitted by Customs to the Census Bureau where it is maintained as a source of national import data. Non-revenue related errors are those involving this required statistical information.

Whether a test participant must file an individual amendment letter or a quarterly tracking report for statistical information errors depends on whether the Census Bureau, under its rules, requires the reporting of the corresponding corrections. Under those rules, errors in required statistical information that exceed a certain level must be reported and errors that fall below that level are not reported.

For statistical information errors that must be reported to the Census Bureau, the test participant must file an individual amendment letter. If Customs agrees with the letter, it will unset the liquidation cycle and issue a ''change liquidation,'' correcting the erroneous information. If Customs disagrees, concluding that there has not been an error, it will issue a ''no change'' liquidation. After liquidation, the test participant may file a protest under 19 U.S.C. 1514 or, if appropriate, a petition requesting reliquidation under 19 U.S.C. 1520(c). For errors that do not require reporting to the Census Bureau, the test participant must file a quarterly tracking report. Customs will evaluate the report but not unset the liquidation cycle, whether or not it agrees that there has been error. After liquidation in due course, the participant may file a protest or a petition requesting reliquidation.

Guidelines for determining when statistical information errors require the filing of an individual letter or a quarterly tracking report: These guidelines show, for each of four categories of merchandise, that a post entry amendment concerning statistical information errors that meet (and exceed) Census Bureau statistical reporting levels must be filed through an individual amendment letter and that a post entry amendment concerning statistical information errors that do not meet those levels must be filed through a quarterly tracking report. The statistical levels are also set forth.

(a) *Quota merchandise:*

(i) Statistical information errors that meet Census Bureau levels and require the filing of a post entry amendment through an individual amendment letter:

(A) Any error in the country of origin of the merchandise, net quantity of the merchandise, visa number, and HTSUS number;

(B) A value error when the difference between the entered and correct values is $10,000 or more; and

(C) An error relative to other charges (freight, insurance, and all other costs and expenses incurred in bringing the merchandise from the port of export to the U.S. port (see General Statistical Note (a)(xiv), HTSUS)) when the difference between the entered and correct values is $10,000 or more.

(ii) Statistical information errors that do not meet Census Bureau levels and require the filing of a post entry amendment through a quarterly tracking report:

(A) A value error when the difference between the entered and correct values is less than $10,000; and

(B) An error relative to other charges (freight, etc.) when the difference between the entered and correct values is less than $10,000.

(b) *Non-quota textile merchandise of Chapters 50 through 65, HTSUS, that is subject to a textile category number:* (i) All statistical information errors (country of origin, quantity, HTSUS number, value, other charges (freight, etc.)) relative to this category of merchandise meet Census Bureau levels and require the filing of a post entry amendment through an individual amendment letter when the entered value of the merchandise is $3,000 or more.

(ii) All statistical information errors relative to this category of merchandise do not meet Census Bureau levels and require the filing of a post entry amendment through a quarterly tracking report when the entered value of the merchandise is less than $3,000.

(c) *Merchandise subject to a Voluntary Restraint Agreement:* (i) Statistical information errors that meet Census Bureau levels and require the filing of a post entry amendment through an individual amendment letter:

(A) Any error in country of origin, quantity of merchandise, and visa or HTSUS numbers;

(B) A value error when the difference between the entered and correct values is $10,000 or more; and

(C) An error relative to other charges (freight, etc.) when the difference between the entered and correct values is $10,000 or more.

(ii) Statistical information errors that do not meet Census Bureau levels and require the filing of a post entry amendment through a quarterly tracking report:

(A) A value error when the difference between the entered and correct values is less than $10,000; and

(B) An error relative to other charges (freight, etc.) when the difference between the entered and correct values is less than $10,000.

(d) *All other merchandise:* (i) Statistical information errors that meet Census Bureau levels and require the filing of a post entry amendment through an individual letter:

(A) An error in the country of origin when the entered value for the line item is $10,000 or more;

(B) An error in the net quantity of the merchandise when the difference between the entered and correct quantities is at least 10% and the entered value for the line item is $10,000 or more;

(C) A value error when the difference between the entered and the correct values is $10,000 or more;

(D) An error in the HTSUS number when the entered value for the line item is $10,000 or more;

(E) An error relative to other charges (freight, etc.) when the differences between the entered and corrected values is $10,000 or more; and

(F) Any concentration of multiple entry summaries with erroneous reportable data when the accumulated total value involved is substantial but those entry summaries individually do not meet Census Bureau levels. (This reflects a Census Bureau requirement to make corrections to each entry summary included in the concentration of multiple entry summaries that meet the above description when the volume of entry summaries is substantial and the value level of each entry summary is also substantial but less than the required level. For example, a concentration of multiple entry summaries evidencing a country of origin error when the volume of those entry summaries is substantial and the per line item value for each entry summary is also substantial through less than $10,000 (the ordinarily required level). For guidance on the meaning of ''substantial'' in these contexts, contact the local Customs port office.)

(ii) Statistical information errors that do not meet Census Bureau levels and require the filing of a post entry

amendment through a quarterly tracking report:

(A) An error in the country of origin when the entered value for the line item is less than $10,000;

(B) An error in the net quantity of the merchandise when the difference between the entered and correct quantities is less than 10 percent or the entered value for the line item is less than $10,000;

(C) A value error when the difference between the entered and correct values is less than $10,000;

(D) An error in the HTSUS number when the entered value for the line item is less than $10,000;

(E) An error relative to other charges (freight, etc.) when the difference between the entered and correct values of the merchandise is less than $10,000.

Guidelines for processing non-revenue related statistical information errors: (a) Statistical information error requiring report to Census Bureau:

• Importer files individual amendment letter.

• Customs unsets liquidation cycle and issues a ''change liquidation''.

• After liquidation, importer may file a protest or petition.

(b) Statistical information error not requiring report to Census Bureau:

• Importer files quarterly tracking report.

• Customs does not unset liquidation cycle and issues a ''no change'' liquidation in due course.

• After liquidation, importer may file a protest or petition.

Importers who voluntarily participate in the test commit, by such participation, to report all errors through the test procedure by filing either individual amendment letters or quarterly tracking reports (as appropriate under the above procedures) for the duration of the test.

Customs emphasizes that the test applies only to the described procedure for reporting entry summary errors prior to liquidation. The test procedure has no effect on Customs enforcement authority or on other statutory or regulatory provisions and requirements relating to admissibility, restricted or prohibited merchandise, other agency requirements, etc. It is noted that even during the test, the administrative exemption under which Customs disregards ordinary underpayments of up to $20, does not apply to antidumping and countervailing duties.

Authorization for the Test

Pursuant to Customs Modernization provisions in the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993), Customs amended its regulations (19 CFR chapter I), in part, to enable the Commissioner of Customs to conduct limited test programs or procedures designed to evaluate the effectiveness of new technology or operations procedures which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Section 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) allows for general testing for this purpose. *See* T.D. 95–21. This test is established pursuant to that regulatory provision.

Misconduct

The test is open to all importers who elect to follow the procedures set forth in this document for correcting already filed entry summaries prior to liquidation. However, a participant making and amending entries under the test procedures will be subject to the usual penalties, liquidated damages, and other administrative sanctions for any Customs law violations.

Evaluation of the Test

Although by no means exclusive, the following evaluation factors may be used by Customs to assess the merits of the test procedure:

1. Workload impact;
2. Policy and procedure accommodations;
3. System efficiency;
4. Operational efficiency; or
5. Other issues raised by public comment or by the test participants.

Results of the test will be formulated at the conclusion of the test and will be made available to the public upon request. The test may be extended if warranted. Additional information on the post entry amendment procedure can be found under ''Importing and Exporting'' at http://www.customs.gov.

Dated: November 22, 2000.

John H. Heinrich,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–30306 Filed 11–27–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before January 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 16, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–30229 Filed 11–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Notice 97–64, Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

DATES: Written comments should be received on or before January 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Abstract: Notice 97–64 describes temporary regulations that will permit Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

The burden for the collection of information in sections 9 and 10 of Notice 97–64 is reflected in the burden for Form 1099–DIV and Form 2439.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 16, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–30230 Filed 11–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information to obtain a government provided headstone or grave marker for eligible veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 29, 2001.

ADDRESSES: Submit written comments on the collection of information to Jocelyn Hearn, National Cemetery Administration (402B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0222'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Jocelyn Hearn at (202) 273–5181 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

OMB Control Number: 2900–0222.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the next of kin or other responsible parties to apply for Government-provided headstones or markers for unmarked graves of eligible veterans. The information is used by VA to determine the veteran's eligibility for, and entitlement to this benefit.

Affected Public: Individuals or Households, State, Local or Tribal Governments.

Estimated Annual Burden: 85,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 340,000.

Dated: October 31, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–30300 Filed 11–27–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 28, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0154.''

SUPPLEMENTARY INFORMATION:

Title: Application for VA Education Benefits, VA Form 22–1990.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans and members of the selected reserve must complete VA Form 22–1990, Application for Education Benefits, in order to receive VA educational assistance allowance. The information on the application is used to determine the applicant's eligibility to education benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 17, 2000, at pages 50275 and 50276.

Affected Public: Individuals or households.

Estimated Annual Burden: 73,554 hours.

Estimated Average Burden Per Respondent: 35 minutes.

Frequency of Response: Only once.

Estimated Number of Respondents: 126,093.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0154'' in any correspondence.

Dated: October 31, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–30298 Filed 11–27–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 28, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0465.''

SUPPLEMENTAL INFORMATION:

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the information to determine the student's continued entitlement to benefits. VA Form 22–8979 serves as proof of continued enrollment. It obtains certification of actual attendance by the student and verification of that student's continued enrollment before VA release payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 17, 2000 at page 50276.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,000 hours.

Estimated Average Burden Per Respondent: 4 minutes.

Frequency of Response: Annually.

Estimated Annual Responses: 365,000.

Estimated Number of Respondents: 2,190,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0465'' in any correspondence.

Dated: November 2, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–30299 Filed 11–27–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 28, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0406''.

SUPPLEMENTARY INFORMATION:

Title: Verification of VA Benefit-Related Indebtedness, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Extension of a currently approved collection.

Abstract: Lender authorized to make VA-guaranteed home or manufactured loans on the automatic basis have been required to determine through VA whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. Lenders may not close any proposed automatic loan until they have evidence from VA that there is no debt, or if a debt exists, the veteran has agreed on an acceptable repayment plan, or payments under a plan already in effect are current. The form also provides information advising the lender whether or not the veteran is exempt from paying the funding fee, which must be collected on all VA home loans unless the veteran is receiving service-connected disability compensation. This benefits the lender by streamlining the procedure to verify the veteran's receipt of compensation. VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 31, 2000, at page 53091.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,250 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Responses: On occasion.

Estimated Number of Respondents: 75,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0406'' in any correspondence.

Dated: November 2, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–30301 Filed 11–22–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Veterans' Advisory Committee on Education has been renewed for a 2-year period beginning November 14, 2000, through November 14, 2002.

Dated: November 17, 2000.

By direction of the Acting Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–30297 Filed 11–27–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request a revision and extension of an information collection currently in effect with respect to the Standards for Approval of Warehouses. The information collection is authorized by the regulations for the following: Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed; Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils; and Standards for Approval of Warehouses for Cotton or Cotton Linters.

DATES: Comments on this notice must be received on or before January 29, 2001, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Howard Froehlich, USDA, Farm Service Agency, Warehouse and Inventory Division, Storage Contract Branch, STOP 0553, 1400 Independence Avenue SW., Washington, DC 20250–0553, (202) 720–7398; e-mail Howard__Froehlich@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: *Title:* Standards for Approval of Warehouses' Reporting and Recordkeeping Requirements.

OMB Control Number: 0560–0052.

Expiration Date: October 31, 2001.

Type of Request: Revision and extension of a currently approved information collection.

Abstract: The information collected under OMB Control Number 0560–0052, as identified above, allows CCC to administer storage agreements authorized by the CCC Charter Act. The information collected allows CCC to contract for warehouse storage and

related services and to monitor and enforce all provisions of 7 CFR parts 1421, 1423, and 1427. The forms approved by this information collection are furnished to interested warehouse operators or used by warehouse examiners employed by CCC to secure and record information about the warehouse and its operator. The information collected is necessary to provide those charged with executing contracts for CCC a basis to determine whether the warehouse and the warehouse operator meet applicable standards for a contract and to determine compliance once the contract is approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .6 hours per response.

Respondents: Warehouse Operators.

Estimated Number of Respondents: 3,880.

Estimated Number of Responses per Respondent: 2.5.

Estimated Total Annual Burden on Respondents: 483,055 hours.

Proposed topics for comment include: (a) Whether the continued 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 CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Howard Froehlich at the address listed above. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, D.C., on November 20, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–30287 Filed 11–27–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting December 7, 2000, at Harrah's Lake Tahoe Special Events Center, Highway 50, Stateline, NV 89449. This committee, established by the Secretary of Agriculture June 23, 2000 (65 FR 44519), is chartered to advise the Secretary on implementing the terms of the Federal Interagency Partnership at Lake Tahoe and on other matters raised by the Secretary.

DATE AND TIME: The meeting will be held December 7, 2000, beginning at 10:30 a.m. and ending at 3:30 p.m. Public comment period is scheduled for 2:00 p.m.

ADDRESSES: The meeting will be held at Harrah's Special Events Center, 2nd Floor, Harrah's Lake Tahoe, Highway 50, Stateline, NV 89449.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Sue Fitzgerald, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Agenda Review (2) Review of Advisory Committee Action Items (3) Presentation of Advisory Committee budget recommendations for FY 2002 (4) Workshop on the Lake Tahoe Environmental Improvement Program (EIP), including Advisory Committee recommendations for EIP implementation (5) Review of Workshop Outcomes (6) Public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the committee during the open public comment period at the meeting or by filing written statements with the secretary for committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address above.

Late Notice: Owing to last-minute changes to the final agenda for this meeting, this notice is being submitted under the usual 15-day notification period.

Dated: November 21, 2000.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 00–30221 Filed 11–27–00; 8:45 am]

BILLING CODE 37110–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, December 14, 2000. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 2:00 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Review year 2000 actions, (2) Acknowledgment of PAC member service, (3) Public forum, (4) Identify PAC agenda items for 2001.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the December 14 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: November 21, 2000.

Herbert L. Wick,

Acting Forest Supervisor.

[FR Doc. 00–30222 Filed 11–27–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD OCTOBER 6, 2000–NOVEMBER 21, 2000

Firm name	Address	Date petition accepted	Product
Cahill Manufacturing Co., Inc	1032 Cahill Court, Danville, VA 24541	10/20/00	Tire manufacturing machinery.
Quality Trim, Inc	3645 Clark Avenue, St. Louis, MO 63110 ..	10/31/00	Leather, vinyl and cloth ornamental trimmings for the hat, footwear and handbag industries.
S&W Innovative Solutions, Inc.	115 Court Street, Binghamton, NY 13901 ..	10/31/00	Service Company.
Starco Corporation	2001 Shenandoah Ave., N.W., Roanoke, VA 24017.	10/31/00	Automotive parts, starters and alternators.
McCarthy Orchard	8405 Clear Creek Road, Parkdale, OR 97041.	10/31/00	Pears.
A.T. Cross Company, Inc	One Albion Road, Lincoln, RI 02865	11/06/00	Ball point pens, pen and pencil sets and mechanical pencils.
Strong Group, Inc	105 Maplewood Avenue, Gloucester, MA 01930.	11/06/00	Leather goods— organizers, planner cases, binders, computer cases, desk pads, etc.
M. Goe & Son, Inc	3268 Ehrck Hill Road, Hood River, OR 97031.	11/06/00	Pears.
Tough Traveler, Ltd	1012 State Street, Schenectady, NY 12307	11/06/00	Backpack child carriers.
Clinton Industries, Inc	700 Washington Ave, Carlstadt, NJ 07072	11/07/00	Mechanical chain cutters and parts for industrial sawing machines.
Jubilee Embroidery, Inc	411 Highway 601 South, Lugoff, SC 29078	11/07/00	Man-made and cotton embroidery.
Gibbons Surgical Corporation	153 S. Birdneck Road, Virginia Beach, VA 23451.	11/16/00	Surgical instruments.
R & M Apparel, Inc	721 Donahue Street, Gallitzin, PA 16641 ...	11/16/00	Blouses and shirts of cotton.
Blough-Wagner Manuf. Co., Inc.	Shuman Street, Middleburg, PA 17842	11/21/00	Ladies sportswear and sweatshirts.
G & H Industries, Inc	419 Eleanor Street, Centreville, MI 49032 ..	11/21/00	Electronic audio connectors and cables.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 17, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–30223 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan; 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 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–032. *Applicant:* University of Michigan, Ann Arbor, MI 48109–2029. *Instrument:* Aerosol Generator. *Manufacturer:* Topas GmbH, Germany. *Intended Use:* See notice at 65 FR 62334, October 18, 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 particulate aerosol delivery rate range of 20–500 grams/hour and (2) linear (stable) output well over one half hour. A domestic manufacturer of similar equipment advised November 13, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

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. 00–30312 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027302–0302–01]

RIN: 0648 ZA98

National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces that applications may be submitted for the Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Program) jointly established in 1999 by the National Sea Grant College Program Office (NSGO), in fulfilling its broad educational responsibilities and to strengthen its collaboration with the National Marine Fisheries Service (NMFS), and NMFS, in fulfilling its responsibilities to manage, conserve, and protect the Nation's living marine resources within the U.S. Exclusive Economic Zone and to provide the sound scientific information and analyses necessary for those purposes. Contingent upon the availability of Federal funds, the Program will provide grants to support four graduate students, two in Population Dynamics and two in Marine Resource Economics, who are United States citizens and enrolled in relevant PhD degree programs in any university in the United States and its territories. Fellows will work on thesis problems of public interest and relevance and have summer internships under the guidance of a NMFS mentor at participating NMFS Science Centers or Laboratories. Applications must be submitted through one of the state Sea Grant programs (see below) (or to the National Sea Grant Office only if an applicant is attending a university in a non-Seas Grant state).

DATES: Applications must be received by February 15, 2001 by a state Sea Grant program (or the National Sea Grant Office only if an applicant is attending a university in a non-Sea Grant state).

ADDRESSES: Applications should be addressed to the nearest state Sea Grant program (or the National Sea Grant Office only if an applicant is attending a university in a non-Sea Grant state). Contact the appropriate state Sea Grant program from the list below to obtain the mailing address.

FOR FURTHER INFORMATION CONTACT: Information can be obtained from Dr. Emory D. Anderson, Program Director for Fisheries, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910, tel: (301) 713–2435 ext. 144, e-mail: emory.anderson@noaa.gov; from any state Sea Grant program (see below); or from any participating NMFS facility (see below).

Sea Grant Programs

University of Alaska—(907) 474–7086
University of California—(619) 534–4440
University of Connecticit—(860) 405–9128
University of Delaware—(302) 831–2841
University of Florida—(352) 392–5870
University of Georgia—(706) 542–6009
University of Hawaii—(808) 956–7031
University of Illinois—(765) 494–3593
Louisiana State University—(225) 388–6710
University of Maine—(207) 581–1436
University of Maryland—(301) 405–6209
Massachusetts Institute of Technology—(617) 253–7131
University of Michigan—(734) 763–1437
University of Minnesota—(218) 726–8106
Mississippi-Alabama Sea Grant Consortium—(228) 875–9341
University of New Hampshire—(603) 862–0122
New Jersey Marine Science Consortium—(732) 872–1300
State University of New York—(516) 632–6905
University of North Carolina—(919) 515–2454
Ohio State University—(614) 292–8949
Oregon State University—(541) 737–2714
University of Puerto Rico—(787) 832–3585
Purdue University—(765) 494–3593
University of Rhode Island—(401) 874–6800
South Carolina Sea Grant Consortium—(843) 727–2078
University of Southern California—(213) 740–1961
Texas A&M University—(409) 845–3854
Virginia Graduate Marine Science Consortium—(804) 924–5965
University of Washington—(206) 543–6600
University of Wisconsin—(608) 262–0905
Woods Hole Oceanographic Institute—(508) 289–2557

Participating NMFS Facilities for Population Dynamics Fellowships

Alaska Fisheries Science Center

Auke Bay Laboratory, Juneau, AK; Contact person: Phillip Rigby; Tel: (907) 789–6653; E-mail: phillip.rigby@noaa.gov
National Marine Mammal Laboratory, Seattle, WA; Contact person: Douglas DeMaster; Tel: (206) 526–4047; E-mail: douglas.demaster@noaa.gov
Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Richard Marasco; Tel: (206) 526–4172; E-mail: rich.marasco@noaa.gov

Northwest Fisheries Science Center

Montlake Laboratory, Seattle, WA; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov
Mark O. Hatfield Marine Science Center, Newport, OR; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov

Northeast Fisheries Science Center

Woods Hole Laboratory, Woods Hole, MA; Contact person: Fredric Serchuk; Tel: (508) 495–2245; E-mail: fred.serchuk@noaa.gov

Southeast Fisheries Science Center

Miami Laboratory, Miami, FL; Contact person: Nancy Thompson; Tel: (305) 361–4285; E-mail: nancy.thompson@noaa.gov
Beaufort Laboratory, Beaufort, NC; Contact person: Douglas Vaughan; Tel: (252) 728–8761; E-mail: doug.vaughan@noaa.gov

Southwest Fisheries Science Center

La Jolla Laboratory, La Jolla, CA; Contact person: Richard Neal; Tel: (858) 546–7066; E-mail: richard.a.neal@noaa.gov
Pacific Fisheries Environmental Laboratory, Pacific Grove, CA; Contact person: George Boehlert, Tel: (831) 648–8447; E-mail: george.boehlert@noaa.gov
Honolulu Laboratory, Honolulu, HI; Contact person: Jerry Wetherall; Tel: (808) 983–5386; E-mail: jerry.wetherall@noaa.gov
Santa Cruz Laboratory, Santa Cruz, CA; Contact person: Churchill Grimes; Tel: (831) 459–4879; E-mail: churchill.grimes@noaa.gov

Participating NMFS Facilities for Marine Resource Economics Fellowships

Northeast Fisheries Science Center

Woods Hole Laboratory, Woods Hole, MA; Contact person: Philip Logan; Tel: (508) 495–2354; E-mail: phil.logan@noaa.gov

Southeast Fisheries Science Center

Miami Laboratory, Miami, FL; Contact person: Nancy Thompson; Tel: (305) 361–4285; E-mail: nancy.thompson@noaa.gov.

Southwest Fisheries Science Center

La Jolla Laboratory, La Jolla, CA; Contact person: Richard Neal; Tel: (858) 546–7066; E-mail: richard.a.neal@noaa.gov

Northwest Fisheries Science Center

Montlake Laboratory, Seattle, WA; Contact person: Linda Jones; Tel: (206) 860–3200; E-mail: linda.jones@noaa.gov

Alaska Fisheries Science Center

Resource Ecology and Fisheries Management Division, Seattle, WA; Contact person: Joseph Terry; Tel: (206) 526–4253; E-mail: joe.terry@noaa.gov

SUPPLEMENTARY INFORMATION: National Sea Grant College Program—National Marine Fisheries Service Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics

I. Program Authority

Authority: 33 U.S.C. 1127. (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.)

II. Introduction

The National Sea Grant College Program Office (NSGO) and the National Marine Fisheries Service (NMFS) established a new Graduate Fellowship Program in Population Dynamics and Marine Resource Economics (Program) in 1999. Contingent upon the availability of Federal funds, the Program will award fellowships, to begin in the summer, to four students each year who are interested in careers related to (1) the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status, and (2) the economics of the conservation and management of living marine resources. Two fellowships will be awarded each year in each of the above two disciplines resulting in an anticipated six students per discipline eventually supported annually by fellowships when the Program reaches its maximum level three years following its inception.

The fellowships will provide support for up to three years for highly qualified graduate students working towards a PhD in population dynamics or related fields of study and for up to two years for highly qualified graduate students working towards a PhD in marine resource economics, natural resource economics, or environmental economics. Continued support after the first year will be contingent upon the availability of Federal funds and satisfactory performance of the Fellow. In addition to his/her major professor, each Fellow will be required to work closely with an expert (mentor) from NMFS who will provide data for the Fellow's thesis, serve on the Fellow's committee, and host an annual summer internship at the participating NMFS facility.

The goals of the Program are to (1) encourage qualified applicants to pursue careers in (a) population dynamics and stock assessment methodology or (b) marine resource economics; (2) increase available expertise related to (a) the population dynamics and assessment of stock status of living marine resources or (b) economic analysis of living marine resource conservation and management decisions; (3) foster closer relationships between academic scientists and NMFS; and (4) provide real-world experience to graduate students and accelerate their career development.

III. Eligibility

Any student may apply who is a United States citizen. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at a university in the United States, or submit a signed letter from the university indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at a university in the United States.

IV. Award

The award for each fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of $38,000 per year, 50% ($19,000) of which will be contributed by NMFS, 33⅓% ($12,667) by the NSGO, and 16⅔% ($6,333) by the university as the required 50% match of NSGO funds. The portion of the award provided to each Fellow for salary (stipend), living expenses (per diem), tuition (unless waived), health insurance and other university fees, and travel necessary to carry out the proposed thesis research and to attend the annual Fellows meeting in the spring in Silver Spring, MD will be determined and distributed by the state Sea Grant program/university in accordance with its guidelines. Indirect costs are not allowable for either the fellowship or for any costs associated with the fellowship, according to 15 CFR 917.11(e), Guidelines for Sea Grant Fellowships.

V. Selection Criteria

Selection criteria will include (1) relevant academic ability and achievement, particularly quantitative skills (35%); (2) demonstrated research ability in the discipline and appropriateness/importance of proposed thesis topic (30%); (3) expertise of major professor (20%); and (4) additional relevant experience (15%).

VI. Selection

Selection is competitive. A review panel consistent of experts in the two disciplines and representatives from the NSGO and NMFS will evaluate and rank the candidates in accordance with the above criteria. The panel members will provide individual evaluations on each candidate, but there will be no consensus advice. Two Fellows will be selected in each discipline by the Fellowship Program Manager based in part on the rankings provided by the review panel. In addition, the Program Manager will give priority to NMFS Fisheries Science Centers which do not currently have Fellows. Accordingly, awards may not necessarily be made to the two highest-scoring candidates in each discipline.

VII. Timetable

February 15, 2001, 5 p.m. (local time)—Applications due at state Sea Grant program or NSGO (only if an applicant is attending a university in a non-Sea Grant state).

February 21, 2001, 5 p.m. EST—Applications due at NSGO from state Sea Grant programs.

April 1, 2001 (approximate)—Successful Fellows may expect to be notified.

June 1, 2001 (approximate)—Fellowships awarded and will commence.

VIII. Participating NMFS Facilities

Mentors will be from participating NMFS Science Centers, Laboratories, or Regional Offices. Each Fellow will be required to work as a summer intern at the participating NMFS facility either on his/her thesis or on appropriate related problems. Remuneration for the summer internship will be part of the annual award. Population Dynamics Fellows will also be expected to spend 10–20 days at sea per year learning about sampling techniques and problems, commercial fishing, fishery biology, and local and regional issues of importance to fisheries management. Fellows may also work, as necessary, at the participating NMFS facility during some or all of the academic year at the mutual discretion of mentor, major professor, and Fellow.

IX. Reporting Requirements

Fellows will submit a one-page description of their thesis research or assignment based on discussions involving mentor, major professor, and Fellow to the Fellowship Program Manager by April 30, 2001. The thesis research or assignment description will reflect a clear mutual understanding of the substantive dimensions of the project and its expected results.

Fellows will, for each year of their fellowship, provide a written annual summary of their accomplishments and activities during the preceding year to the Fellowship Program Manager. This summary is due no later than one month following the anniversary of the start of the fellowship. Fellows will be expected to present a review of their research during the annual Fellows meeting held in the spring in Silver Spring, MD.

X. Application Instructions

An application must be received by February 15, 2001 by the state Sea Grant program in the state in which the student is or will be enrolled. If the student is or will be enrolled in a university in a non-Sea Grant state, the application should be submitted to the nearest state Sea Grant program. The addresses of the state Sea Grant College programs may be found at the following Internet website: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may be obtained by contacting the Program Manager, Dr. Emory D. Anderson, at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). The state Sea Grant program must forward the application to the NSGO, certifying that the application was received by the due date. Applications sent to the NSGO should be addressed to: National Sea Grant Office, R/SG, Attn: Mrs. Geraldine Taylor, Graduate Fellowship Competition, Room 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2445). An applicant must contact the prospective participating NMFS facility and mentor prior to submitting the application, and must include a letter of commitment from the NMFS mentor in the application. Each application package should be completed with input from the student, major professor, university, and state Sea Grant program. All pages should be single- or double-spaced, typewritten in at least a 10-point font with 1″ margins and printed on 8.5″ × 11″ paper. An original and at least 2 additional copies of the application must be submitted. Each application *must* include the first eight items listed below, with the standard forms indicated under Item 9 required only with the final funding requests submitted for the successful fellowship applications.

(1) *Complete curriculum vitae* from both student and major professor.

(2) *An education and career goal statement* (not to exceed two pages) from the applicant indicating the number of years for which fellowship support is being sought and the applicant's interest in (a) marine population dynamics or the development and implementation of quantitative methods for assessing stock status of living marine resources, or (b) in marine resource economics (a summary of the proposed thesis or the general intended area of study should be included, if available).

(3) *Three signed letters of recommendation*, with at least one from the student's major professor.

(4) *A signed letter of commitment from the prospective NMFS mentor.*

(5) *Official copies of all undergraduate and graduate student transcripts.*

(6) *Proof of application, acceptance, provisional acceptance, and enrollment* (only for Population Dynamics applicants) in the case of students entering graduate school (i.e., who have not yet completed one semester of graduate work) if they are selected for a fellowship.

(7) *Project Summary*: The Sea Grant Project Summary Form 90–2 should preferably be used, but the universities or state programs may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: (a) *Title*: Use the exact title as it appears in the rest of the application. (b) *Principal Investigator*: The applicant's major professor or the state Sea Grant director may be used. (c) *Funding request for each year of the fellowship*, including matching funds. (d) *Project Period*: Start and completion dates. Applications should request a start date of June 1, 2001, or later. (e) *Project Summary*: This should include the rationale for the fellowship, the scientific or technical objectives and/or hypotheses to be tested in the Fellow's thesis, and a brief summary of work to be completed.

(8) *Budget and Budget Justification*: There should be a separate budget for each year as well as a cumulative annual budget for the entire period of the proposed fellowship. The Sea Grant Budget Form 90–4 should preferably be used, but the universities or state programs may use their own form as long as it provides the same information as the Sea Grant form. A written matching commitment, equal to 50% of the NSGO amount (see above), from the university to support the budget for the period of the award must be provided. Allocation of matching funds must be specified in the budget and may consist of up to 50% of a month's salary of the major professor, waived tuition, equipment and supplies, and any other costs typically used as matching funds. In addition to stipend and tuition for the applicant, the budget should include funds for equipment, supplies, and travel necessary to carry out the proposed thesis research. Funds should also be allocated for one trip per year to the NOAA offices in Silver Spring, MD for a meeting of all Fellows, mentors, and relevant staff from the NSGO and NMFS.

(9) *Standard Application Forms*: Applicants may obtain all required application forms at the following Internet website: (*http://www.nsgo.seagrant.org/research/rfp/index.html#3*), from the state Sea Grant programs, or from Dr. Emory D. Anderson at the National Sea Grant Office (phone: 301–713–2435 x144 or e-mail: emory.anderson@noaa.gov). For applications selected for fellowships, the following forms must also be included in the final request for funding:

(a) *Standard Form 424, Application for Federal Assistance*. Applications should clearly identify the program area being addressed by starting the project title with ''Graduate Fellowship''. Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF–424. For Section 10, applicants should enter ''11.417'' for the CFDA Number, and ''Sea Grant Support'' for the title. The form must contain the original signature

of an authorized representative of the applying institution.

(b) *Primary Applicant Certifications*. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'', and the following explanations are hereby provided:

(i) *Non-Procurement Debarment and Suspension*. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(ii) *Drug-Free Workplace*. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(iii) *Anti-Lobbying*. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) *Anti-Lobbying Disclosures*. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'', as required under 15 CFR Part 28, Appendix B.

(c) *Lower Tier Certifications*. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities''. Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

XI. Other Requirements

(A) *Federal Policies and Procedures*—Recipients and sub-recipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) *Pre-Award Activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) *No Obligation for Future Funding*—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) *False Statements*—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fire or imprisonment as provided in 18 U.S.C. 1001.

(G) *Intergovernmental Review*—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(H) *Purchase of American-Made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(I) *Pursuant to Executive Orders 12876, 12900, and 13021*, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

This notice contains a collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Summary Form (90–2), the Sea Grant Budget Form (90–4), and Standard Form 424 have been approved under the respective control numbers 0648–0362, 0648–0362, and 0348–0043, with the average time per response of 20, 15, and 45 minutes. These estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of this collection to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any 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.

Dated: November 21, 2000.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

Dated: November 21, 2000

William W. Fox, Jr.,

Director, Office of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 00–30219 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651–AB28

Request for Comments on Basic Proposals for an Instrument on the Protection of Audiovisual Performances to be Considered by the WIPO Diplomatic Conference

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The World Intellectual Property Organization (WIPO) will convene a Diplomatic Conference on the Protection of Audiovisual Performances, in Geneva, Switzerland, during December 7–20, 2000. Two Basic Proposals will form the basis for the negotiations: the Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances to be Considered by the Diplomatic Conference (document IAVP/DC/3), which was prepared by the Chairman of the Standing Committee on Copyright and Related Rights (SCCR), is available on the WIPO website at *http://www.wipo.int.* The Basic Proposal for Administrative and Final Provisions of the Instrument (document IAVP/DC/4), prepared by the International Bureau of WIPO, is also available on the WIPO website. The United States Patent and Trademark Office (''USPTO''), in cooperation with the United States Copyright Office and the United States Department of State, is seeking views of the public on this effort and any consequent potential changes to United States law and practice. Comments received will be shared among the relevant agencies.

DATES: Comments should be submitted on or before December 6, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to the Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575 or by electronic mail through the Internet to *elizebeth.shaw2@uspto.gov.* All comments will be maintained for public inspection in Room 902 of Crystal Park II, 2121 Crystal Drive, Arlington, Virginia. The relevant negotiating documents may be found at the WIPO website: *http://wipo.int/news/en/index.html?wipo__content__frame=/news/en/conferences.html.*

FOR FURTHER INFORMATION CONTACT: Linda S. Lourie by telephone at (703) 305–9300; by facsimile at (703) 305–8885; by electronic mail to linda.lourie@uspto.gov; or by mail addressed to the Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Linda S. Lourie, Attorney-Advisor.

SUPPLEMENTARY INFORMATION:

Background

WIPO will convene a Diplomatic Conference on the Protection of Audiovisual Performances in Geneva, Switzerland, during December 7–20, 2000. Two Basic Proposals will form the basis for the negotiations. The Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances, which will be considered by the Diplomatic Conference (document IAVP/DC/3), was prepared by the Chairman of the SCCR. The Basic Proposal for Administrative and Final Provisions of the Instrument (document IAVP/DC/4) was prepared by the International Bureau of WIPO. The texts of both the Basic Proposal for the Substantive Provisions and the Basic Proposal for Administrative and Final Provisions, along with other documents relating to the forthcoming Diplomatic Conference, are available on the WIPO website.

The issues considered under the Basic Proposal for the Substantive Provisions were initially considered within the framework of the 1996 Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, which concluded with the signing of the WIPO Copyright Treaty (''WCT'') and the WIPO Performances and Phonograms Treaty (''WPPT''). However, at that time, no international consensus developed to provide for protection for audiovisual performances and the decision was taken by the Diplomatic Conference to postpone consideration of this issue for further discussion by the Standing Committee on Copyright and Neighboring Rights. During the consideration over the past four years of existing national and regional legislation concerning audiovisual performances and information on the *de facto* situation, including contractual practice, the United States has put forward a number of proposals to advance the protection of performers of audiovisual works in line with current U.S. practice; many of these proposals have found their way into the Basic Proposal. Various proposals have been submitted by other WIPO members, including Korea, the Group of African States, Canada, the United Republic of Tanzania and Japan. The European Community also submitted proposals on behalf of its member states. In light of the extensive study of the issues, the present Diplomatic Conference is now being convened.

The United States position reflects the broad private sector consensus that has developed among performers unions, motion picture producers and other affected groups. Four provisions, in particular, are of primary importance for U.S. interests in light of current industry practices, namely those pertaining to national treatment, moral rights, the transfer of rights from the performer to the producer and the broadcast and communication to the public right. The Basic Proposal addresses each of these issues (Articles 4, 5, 11 and 12, respectively).

Brief Summary of the Basic Proposals

The Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances would update the international norms on the rights offered to audiovisual performers, compliment our existing international obligations and further our policy of strong intellectual property protection.

Essentially, the Instrument has four objectives, namely: (1) To develop and maintain the protection of rights of performers in their audiovisual performances in a manner as effective and uniform as possible, consistent with the goal of facilitating the exploitation of audiovisual works in the global marketplace, (2) to introduce new international rules in order to provide adequate solutions to the questions raised by economic, cultural and technological developments, (3) to offer responses to the challenges of digital technology and (4) to provide a balance between the rights of audiovisual peformers and the larger public interest, particularly education, research and access to information.

To achieve these objectives, the Instrument will include:

- An exclusive right of reproduction for performers in respect of their

performances fixed in audiovisual fixations, with a related provision on exceptions (corresponding to the WPPT);

• The recognition of a right of distribution for performers (corresponding to the WPPT);

• The provision allowing Contracting Parties to determine conditions for the territorial effect of the exhaustion;

• An exclusive right for performers to authorize the making available of their performances fixed in audiovisual fixations, by wire or wireless means, in an interactive, on-demand system consistent with the equivalent right provided under the WPPT;

• An exclusive right of rental for performers where commercial rental has led to widespread copying that ''materially impairs'' the performers' exclusive right of reproductions (this is the same ''material impairment test'' as found in the TRIPs Agreement and the WCT with respect to authors of cinematographic works);

• ''Moral rights'' for performers, including the right to claim to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and the right to object to distortions, mutilations or other modifications of their performances that would be prejudicial to their reputations (performers would not be able to object to modifications that are consistent with the normal exploitation of a performance);

• Exclusive rights of performers to authorize the broadcasting and communication to the public of their performances fixed in audiovisual fixations or a right to equitable remuneration for such uses, consistent with the WPPT;

• A mechanism to ensure that the rights necessary to exploit the film can be effectively secured by the producers;

• A 50-year term of protection for the rights of performers (corresponding to the WPPT); and

• The relevant definitions (''audiovisual fixation,'' ''broadcasting,'' and ''communication to the public'') adapted to the requirements of digital technology.

The Instrument may also include:

• An obligation to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers to protect their rights, such as was provided for in the WPPT;

• An obligation to make unlawful the removal and alteration of electronic rights-management information without authority, as well as the related acts of distribution, importation for distribution and communication to the public, such as was provided for in the WPPT; and

• An obligation to provide for effective enforcement measures necessary to protect the rights granted under this Basic Proposal (corresponding to the WPPT, the Berne Convention and the TRIPs Agreement).

The Basic Proposal presents two alternatives for national treatment: a broad national treatment approach that obliges Contracting Parties to grant national treatment to nationals of other Contracting Parties (a Contracting Party may limit the protection beyond that which is provided for under this Basic Proposal to nationals of other Contracting States on a reciprocal basis); and a narrower one that corresponds to the WPPT. The second provision would provide for national treatment only in respect of the exclusive rights specifically granted in the Basic Proposal and any right to equitable remuneration where such a right is offered in lieu of the right of authorization for broadcasting and communication to the public.

No reservations are allowed under the Basic Proposal. However, the Basic Proposal gives members the option of providing protection to fixed performances in existence at the time of the entry into force of the Instrument and to all performances, whether or not fixed, that occur after the entry into force of the Instrument.

To set forth terms on the formal matters, the Basic Proposal for the Administrative and Final Provisions contains specific Administrative Provisions relating to the administration and implementation of the Basic Proposal. The first issue for consideration by the Diplomatic Conference will be whether this Basic Proposal shall be a self-standing Treaty or a Protocol to the WPPT. One of the implications for this distinction is whether a member State can be a Contracting Party of the present Instrument without being a member of the WPPT, a Treaty which has not yet entered into force (to date, only 16 of the necessary 30 ratifications or accessions have been deposited with the Director General of WIPO). The other alternative offered provides for a separate Assembly where the Instrument becomes a self-standing Treaty.

With either alternative, any intergovernmental organization, such as the European Community, may participate in the vote, in place of its member States, with a number of votes equal to the number of its member States party to the Instrument; no intergovernmental organization is permitted to vote if any of its member States votes for itself.

Issues for Public Comment

The USPTO, in cooperation with the United States Copyright Office and the United States Department of State, is interested in assessing support for the effort to negotiate an Instrument for the Protection of Audiovisual Performances. Interested members of the public are invited to present written comments on any issues they believe to be relevant to protection of audiovisual performances or any aspects of the proposed Basic Proposal. Comments are particularly welcome on the following specific issues:

1. What relationship would you wish to see the proposal Instrument have to the WPPT?

2. What effect, if any, would the designation of the proposed Instrument as a self-standing Treaty, as opposed to a Protocol to the WPPT, have on current U.S. or international practices?

3. The Basic Proposal presents two alternatives for determining National Treatment, namely the obligation to grant national treatment for exclusive rights, rights of remuneration, and additional rights, which may be limited by reciprocity, as well as a more limited national treatment rule such as appears in the WPPT. Which alternative would be preferable in light of current U.S. and international practice?

4. What changes in current practices, including collective bargaining agreements, and broadcasting agreements, would be needed in light of the proposal on broadcasting rights, whether an exclusive right or right of remuneration?

5. The Basic Proposal presents four alternatives for determining the relationship between performers and producers, including a presumption of transfer from the performer to the producer, the entitlement by the producer to exercise the exclusive rights of authorization, a conflict of laws approach, and silence on the issue. In your experience, what would be the relative benefits/disadvantages you would expect in each of these situations? What would be the most predictable and fair solution?

6. The Basic Proposal does not mandate the protection for fixed performances that exist at the time of the entry into force of the Instrument but does permit Member States to do so. In your experience, what benefits or disadvantages would you foresee in allowing for such protection of pre-existing works?

7. How should the issue of moral rights be treated, both in relation to current and future industry practices and past fixed performances not protected by this Instrument? Should they be waivable or transferable? Has the Basic Proposal addressed concerns adequately? Would any additional language be helpful in clarifying U.S. current practices?

8. One mechanism for indicating a consensus in the WCT and WPPT where treaty language was not appropriate was the Agreed Statement. What, if any, Agreed Statements would be desirable to use to augment the Basic Proposal?

In your response, please include the following: (1) Clearly identify the matter being addressed; (2) provide examples, where appropriate, of the matter being addressed; (3) identify, if possible, any relevant legal authorities applicable to the matter being addressed; and (4) provide suggestions regarding how the matter should be addressed by the United States.

Dated: November 22, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–30331 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for BRAC 95 Disposal and Reuse of East Fort Baker, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), and the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of East Fort Baker, California.

The Final EA evaluates the environmental impacts of the disposal and subsequent reuse of the 91-acre installation. Enactment of the Golden Gate National Recreation Area Act (Public Law 92–589) requiring that, when the Department of Defense determined that it no longer had a need for East Fort Baker, the property would transfer to the jurisdiction of the Secretary of the Interior. Disposal of East Fort Baker to the Secretary of the Interior will allow the property to be reused in accordance with the National Park Service's Proposed Plan. Pursuant to the National Environmental Policy Act, the National Park Service prepared a final environmental impact statement (EIS) that examined and analyzed the environmental impacts of the Proposed Plan and its alternatives. This final EIS has been incorporated by reference into the Army's disposal and reuse EA. The only other alternative examined by the Army was the no action alternative. Under the no action alternative, the Army would not dispose of property, but would maintain it in a caretaker status for an indefinite period. Based on the environmental analysis documented in the EA, the Army has determined that the proposed disposal action would have no significant direct, indirect or cumulative impact on the natural or human environment.

DATES: Comments must be submitted on or before December 28, 2000.

ADDRESSES: A copy of the EA may be obtained by writing to Mr. Jerry Fuentes, Corps of Engineers, Sacramento District, Environmental Resources Branch, 1325 J Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Fuentes at (916) 557–7730.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the closure of East Fort Baker was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA and FNSI are available for review at the Marin County Free Library, Marin County Civic Center, San Rafael, CA 94903 and the Sausalito Public Library, 420 Litho, Sausalito, CA 94965.

Dated: November 20, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 00–30180 Filed 11–27–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 28, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 21, 2000.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: National Longitudinal Transition Study-2 (NLTS–2) Survey Package.

Frequency: One time.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 18,977
Burden Hours: 7,843

Abstract: NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services and achievements in multiple domains

(e.g., employment, postsecondary education). The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization.

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 Sheila Carey at (202) 708–6287 or via her internet address *Sheila Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–30214 Filed 11–27–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 28, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 21, 2000.

William Burrow,

Acting Leader, Regulatory Information Management,Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.
Title: Applications for the U.S. Presidential Scholars Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 2,600.
Burden Hours: 41,600.

Abstract: The United States Presidential Scholars Program is a national recognition program to honor and recognize outstanding graduating high school seniors. Candidates are invited to apply to the program based on academic achievements on the SAT and ACT. This program was established under Executive Order of the President 11155.

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. 00–30215 Filed 11–27–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 28, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the

information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 22, 2000.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: 18 and 36 Months Performance Reports for the Child Care Access Means Parents in School Program.

Frequency: 18 and 36 months.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 87
Burden Hours: 609

Abstract: Child Care Access Means Parents in School Program grantees are required to submit an 18 and 36 months performance report in order for program staff to establish if grantees have made substantial progress towards meeting proposed objectives. Also, to determine the justification for the continuation funding for the out years.

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. 00–30307 Filed 11–27–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board, Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board.

DATES AND TIMES: Thursday, December 14, 2000, 10:00 AM–2:00 PM.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. **Note:** Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

The agenda for the December 14th meeting has not been finalized. The meeting, however, will include presentations and Board discussions on two subcommittee final reports. The Board will review and discuss a final report prepared by the Openness Advisory Panel entitled, Becoming a Better Neighbor: A Pilot Review of the Relations between DOE Facilities and their Host Communities, and the final report of the Panel on Emerging Technological Alternatives to Incineration. Members of the Public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the afternoon period for public comment. The final agenda will be available at the meeting. Copies of subject reports will be available in advance of the meeting and may be obtained from the Secretary of Energy Advisory Board's web site located at http://www.hr.doe.gov/seab/ or by calling (202) 586–7092.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice may be published less than 15 days before the date of the meeting due to the late resolution of programmatic issues and publication delays due to the seasonal holidays.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at *http://www.hr.doe.gov/seab.*

Issued at Washington, D.C., on November 22, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–30314 Filed 11–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–000]

ANR Pipeline Company; Notice of Technical Conference

November 21, 2000.

On June 15, 2000, ANR Pipeline Company (ANR) filed in compliance

with Order No. 637. A technical conference to discuss the various issues raised by ANR's filing was held on September 20, 2000, October 4, 2000, and November 15, 2000.

Take notice that an additional session of the technical conference will be held Thursday, January 11, 2001, beginning at 11:00 am in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary

[FR Doc. 00–30204 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01—M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–452–000]

Colorado Interstate Gas Company; Notice of Site Visit

November 21, 2000.

On November 30 and December 1, 2000, the staff of the Office of Energy Projects (OEP) will be conducting an inspection of Colorado Interstate Gas Company's (CIG) Raton Basin Expansion Project in Baca and Las Animas Counties, Colorado; Cimarron, Texas, and Beaver Counties, Oklahoma; and Morton County, Kansas. The site visit will start at 7:30 am on Thursday at the Ambassador Inn at Guymon, Oklahoma and follow the proposed route west. Sites to be visited include the Cimarron River crossings, the Santa Fe Trail crossing, the Cimarron National Grasslands, the proposed Kim Compressor Station, the Keyes Compressor Station, and possibly other locations. The site visit on Friday will start at 8 am at the proposed Trinidad Compressor Station site located off of U.S. Highway 160/350. Representatives of CIG will accompany the OEP staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Laura Turner of the Commission's Office of Energy Projects at (202) 208–0916.

David P. Boergers,

Secretary.

[FR Doc. 00–30201 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–469–000]

East Tennessee Natural Gas Company; Notice of Technical Conference

November 21, 2000.

On August 15, 2000, East Tennessee Natural Gas Company (East Tennessee) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of East Tennessee's filing.

Take notice that a technical conference to discuss the various issues raised by East Tennessee's filing will be held on Tuesday, December 12, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Parties protesting aspects of East Tennessee's filing should be prepared to discuss and alternatives.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–30205 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–105–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2000.

Take notice that on November 14, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 1, 2000:

Forty-Fourth Revised Sheet No. 8A
Thirty-Sixth Revised Sheet No. 8A.01
Thirty-Sixth Revised Sheet No. 8A.02
Fortieth Revised Sheet No. 8B
Thirty-Third Revised Sheet No. 8B.01

FGT states that on August 31, 2000, FGT filed in Docket No. RP00–519–000 to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.14% to become effective for the six-month Winter Period beginning October 1, 2000 reflecting FGT's actual fuel usage and unaccounted for gas during the immediately preceding Winter Period. Subsequently, on November 7, 2000, FGT filed in Docket No. RP01–82–000 to reduce the Base FRCP from 3.14% to 2.50%, effective December 1, 2000. The November 7, 2000 filing is pending before the Commission. In the instant filing, FGT is filing a flex adjustment of (0.25)% to be effective December 1, 2000, which, when combined with the proposed Base FRCP of 2.50%, results in an Effective Fuel Reimbursement Charge Percentage of 2.25%. FGT is filing this flex adjustment to reflect the lower fuel usage currently being experienced on its system.

Also, FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment concurrently with the instant filing.

FGT states that copies of the filing were mailed to all customers served under the rate schedules affected by this filing and the 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30206 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660]

Georgia Pacific Corporation; Notice of Authorization for Continued Project Operation

November 21, 2000.

Georgia Pacific Corporation, licensee for the Forest City Project No. 2660, did not file an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2660 is located on the East Branch of the St. Croix River in Washington County, Maine.

The license for Project No. 2660 was issued for a period ending August 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2660 is issued to Georgia Pacific Corporation for a period effective September 1, 2000, through August 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Georgia Pacific Corporation is authorized to continue operation of the Forest City Project No. 2660 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–30202 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–109–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 21, 2000.

Take notice that on November 17, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Seventeenth Revised Sheet No. 25, to be effective January 1, 2001.

Natural states that the purpose of this filing is to implement the Gas Research Institute (GRI) surcharge in accordance with Section 39 of the General Terms and Conditions of Natural's Tariff. The GRI surcharges were approved by the Commission's letter order issued September 19, 2000, in Docket No. RP00–313–000 (Order), to become effective January 1, 2001.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30208 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–92–000]

Norteno Pipeline Company; Notice of Compliance Filing

November 21, 2000.

Take notice that on November f9, 2000, Norteno Pipeline Company, (Norteno) tendered for filing its' Statement of Compliance with the Commission in response to Order No. 587–L informing the Commission that Norteno's currently effective gas tariff contains provisions permitting imbalance netting and trading by shippers.

Norteno states that copies of this filing have been sent to Norteno's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 28, 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. 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 202–298–2222 for assistance). Comments and protests may

be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30199 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2721]

PPL Maine, LLC; Notice of Authorization for Continued Project Operation

November 21, 2000.

On September 28, 1998, Bangor Hydro Electric Company (by Commission order dated April 1, 1999, the project license was transferred to Penobscot Hydro, LLC, and by Commission order dated October 31, 2000, the licensee's name was changed to PPL Maine, LLC), licensee for the Howland Project No. 2721, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2721 is located on the Piscataquis River in Penobscot County, Maine.

The license for Project No. 2721 was issued for a period ending September 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operation until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2721 is issued to PPL Maine, LLC for a period effective October 1, 2000, through September 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the EPA, notice is hereby given that PPL Maine, LLC is authorized to continue operation of the Howland Project No. 2721 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 00–30200 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–106–000]

Questar Pipeline Company; Notice of Tariff Filing

November 21, 2000.

Take notice that on November 16, 2000, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2001:

First Revised Volume No. 1

Eighteenth Revised Sheet No. 1

Original Volume No. 3

Twenty-Seventh Revised Sheet No. 8

On June 1, 2000, GRI requested approval of funding for its year 2001 research, development and demonstration program and its 2001–2005 five-year plan. The Commission issued an order on September 19, 2000, in Docket No. RP00–313–000, approving GRI's funding plans. Questar's filing incorporated the approved GRI surcharge rates in the Statement of Rates to Questar's tariff.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30207 Filed 11–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–14–000]

City of Vernon, CA v. California Independent System Operator Corporation; Notice of Amendment to Complaint

November 21, 2000.

Take notice that on November 17, 2000, City of Vernon, California (Vernon) filed an amendment to its November 9, 2000 Complaint against the California Independent System Operator Corporation (ISO). The Vernon Amendment supplements its Complaint, which asserts that the ISO has unreasonably delayed approval of Vernon's application to the ISO to become a Participating Transmission Owner (PTO) in the ISO transmission system, and that the ISO has thereby violated its FERC Electric Tariff and the Federal Power Act. Vernon continues to request that the Commission order the ISO to promptly take action to approve and implement Vernon PTO status as of January 1, 2001, or, in the alternative,

for the Commission to take actions necessary to implement Vernon PTO status effective as of January 1, 2001.

Any person desiring to be heard or to protest this 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 must be filed on or before November 29, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 29, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–30242 Filed 1–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–107–000]

Viking Gas Transmission Company; Notice of Tariff Filing

November 21, 2000.

Take notice that on November 16, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective January 1, 2000:

Twenty-Third Revised Sheet No. 6
Sixteenth Revised Sheet No. 6A
Sixth Revised Sheet No. 6B

Viking states that the purpose of this filing is to change Viking's Gas Research Institute Adjustment (GRI Adjustment) as permitted by Sections 154.204 and 154.401 of the Commission's Rules and Regulations, 18 CFR 154.204, 154.401 and in accordance with the Commission's September 19, 2000 ''Letter Order Regarding the Application of Gas Research Institute for Advanced Approval of Its 2001–2005 RD&D Plant and 2001 RD&D Program and Jurisdictional Rate Provisions To Fund the 2001 Program,'' issued in Docket No. RP00–313–000 (September 19, 2000 Letter Order). Viking's authority to make this filing is set forth in Article XVIII of the General Terms and Conditions of Viking's FERC Gas Tariff, First Revised Volume No. 1.

Accordingly, Viking's GRI Adjustment has been changed to reflect the Commission's September 19, 2000 Letter Order as follows: a demand/reservation surcharge of 9 cents per Dth per month for high load factor customers; a demand/reservation surcharge of 5.5 cents per Dth per month for low load factor customers; and a volumetric commodity/usage surcharge of .70 cents per Dth.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–30198 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–453–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 20, 2000.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER01–453–000]

Take notice that on November 14, 2000, Nevada Power Company tendered for filing notification of withdrawal of membership in the Western Regional Transmission Association effective January 1, 2001 in the above referenced docket.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Solar Turbines Incorporated and STI Capital Company

[Docket Nos. EC01–23–000 and ER01–413–000]

Take notice that on November 9, 2000, Solar Turbines Incorporated and STI Capital Company, both of 2200 Pacific Coast Highway, San Diego, CA 92101 (Applicants), filed with the Federal Energy Regulatory Commission (Commission) an Application seeking authorization to transfer jurisdictional assets pursuant to Sections 203 and 205 of the Federal Power Act and the Part 33 of the Commission's Regulations.

The Application seeks authorization for Solar to Transfer to STI any jurisdictional interconnection facilities, Solar's market based rate schedule and any wholesale power agreements executed pursuant to that rate schedule.

Comment date: November 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. GPU, Inc., GPU International, Inc. and MEP Investments, LLC

[Docket No. EC01–24–000]

Take notice that on November 13, 2000, GPU, Inc. (GPU), GPU International, Inc. (GPUI), and MEP Investments, LLC (MEP) filed a Joint Application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations requesting authorization and approval of the sale by GPU and the purchase by MEP of the stock of GPUI.

Comment date: December 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. The AES Corporation and IPALCO Enterprises, Inc.

[Docket No. EC01–25–000]

Take notice that on November 14, 2000, The AES Corporation (AES) and IPALCO Enterprises, Inc. (AES) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act requesting authorization for AES to acquire IPALCO.

Applicants state that copies of this filing have been served on the Indiana Utility Regulatory Commission and the Illinois Commerce Commission.

Comment date: January 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Baconton Power LLC

[Docket Nos. EC01–26–000 and ER00–2398–002]

Take notice that on November 14, 2000, Baconton Power LLC (Baconton) submitted for filing an application under section 203 of the Federal Power Act for approval of the indirect transfer of control over Baconton's jurisdictional transmission facilities and paper facilities in order to change the respective ownership interests of Baconton's parent holding companies from 85 percent held by SOWEGA Energy Resources LLC (SER) and 15 percent held by Tejas Power Generation, L.L.P. (Tejas Power) to 65 percent held by SER and 35 percent held by Tejas Power. Baconton also submits a notice of change of status with respect to its market-based rate tariff authority granted in Docket No. ER00–2398–000.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. City of Vernon, California

[Docket No. EL00–105–001]

Take notice that on November 9, 2000, the City of Vernon, California (Vernon) tendered for filing, in compliance with the Commission's October 27, 2000 Order on Proposed Transmission Revenue Requirement, 93 FERC ¶61,103: (1) a revised Transmission Revenue Requirement (TRR) for purposes of Vernon's becoming a Participating Transmission Owner as of January 1, 2001 under the California Independent System Operator Corporation's FERC Electric Tariff, and (2) a Transmission Owner Tariff, applicable to its activities as a PTO.

Vernon states that copies of this filing have been served on each person designated on the official service list compiled by the Secretary in these proceedings.

Comment date: December 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Dominion Nuclear Marketing III, L.L.C.

[Docket No. ER00–3746–002]

Take notice that on November 14, 2000, Dominion Nuclear Marketing III, L.L.C., tendered for filing its proposed FERC Market-Based Sales Tariff and requested certain waivers of the Commission's Regulations. On October 31, 2000, at the request of the Commission's Staff, Dominion Nuclear Marketing III, L.L.C., resubmitted its FERC Market-Based Sales Tariff to assure compliance with the Commission's policy regarding the provision of ancillary services at market-based rates and also resubmitted its Code of Conduct for Officers and Employees of Dominion Nuclear Marketing III, L.L.C., to assure compliance with the Commission's pagination guidelines. Also as part of Dominion Nuclear Marketing III, L.L.C.'s filing, the issue date of its tariff sheets was changed to October 31, 2000. In its October 31st filing Dominion Nuclear Marketing III, L.L.C. was inadvertently identified as Dominion Nuclear Marketing III, Inc., rather than Dominion Nuclear Marketing III, L.L.C. On November 14, 2000, Dominion Nuclear Marketing III, L.L.C., made a filing for the sole purpose of identifying itself by its correct name.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER01–290–001]

Take notice that on November 14, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing a replacement Sheet No. 4 for the unexecuted Service Agreement between SDG&E and the City of Escondido (the City) for service under SDG&E Open Access Distribution Tariff (OADT). SDG&E states that this replacement sheet clarifies that either party may terminate the Service Agreement on 60 days advance written notice.

SDG&E requests that the Service Agreement, which was filed on October 31, 2000 and this replacement errata Sheet No. 4 be made effective on January 1, 2001 to assure that service under the OADT is available to the City on this date, the date on which the existing Power Sale Agreement between SDG&E and the City terminates.

Copies of this filing have been served upon the California Public Utilities Commission and the City.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER00–3214–001]

Take notice that on November 13, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a letter Agreement dated November 2, 2000, which further clarifies the Sale of Additional Short Term Firm Transmission Service (STFTS) Letter Agreement dated June 2, 2000, portion of the Northern California Power Agency (NCPA) Interconnection Agreement filing in FERC Docket No. ER00–3214–000. The November 2 Letter Agreement, clarifying the STFTS Letter Agreement, among NCPA, PG&E and the CAISO is intended to resolve the concerns of the CAISO and permit the acceptance of the filing in FERC Docket No. ER00–3214–000.

Copies of this filing were served upon NCPA, the California Independent System Operation Corporation, the California Power Exchange Corporation and the California Public Utilities Commission.

Comment date: December 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–3513–001]

Take notice that on November 9, 2000, pursuant to the Commission's Order in PJM Interconnection, L.L.C., 93 FERC ¶ 61,061 (2000), PJM Interconnection, L.L.C. (PJM), tendered for filing (1) a redesignated First Revised Sheet No. 144A under PJM's FERC Electric Tariff, Third Revised Volume No. 1; and (2) a revised Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to conform to the requirements of Designation of Electric Rate Schedule Sheets, Order No. 614, III FERC Stats. & Regs., Regs. Preambles ¶ 31,096 (2000).

Copies of this filing were served via email upon the PJM members, and by hard copy to the state commissions within the PJM control area.

Comment date: November 30, 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. ER01–437–000]

Take notice that on December 14, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

(''Allegheny Energy Supply'') filed Service Agreement No. 101 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply proposes to make service available as of November 13, 2000 to UGI Utilities Inc.

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, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–438–000]

Take notice that on November 14, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Sales Agreement between Companies and Duke Energy Trading and Marketing, LLC under the Companies' Rate Schedule MBSS.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER01–439–000]

Take notice that on November 14, 2000, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted service agreement for Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests and effective date of October 16, 2000, for the service agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Hoosier.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. SOWEGA Power LLC and Baconton Power LLC

[Docket No. ER01–440–000]

Take notice that on November 14, 2000, SOWEGA Power LLC and Baconton Power LLC, tendered for filing a restated Common Bus Ownership Agreement, revising SOWEGA Rate Schedule FERC No. 3 and Baconton Rate Schedule FERC No. 1. The revised agreement is designated as SOWEGA First Revised Rate Schedule FERC No. 3 and as Baconton First Revised Rate Schedule FERC No. 1.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Xcel Energy Services

[Docket No. ER01–441–000]

Take notice that on November 14, 2000, Xcel Energy Services on behalf of Public Service Company of Colorado tendered for filing an amended Power Supply Agreement with Yampa Valley Electric Association, Inc. (Yampa), as contained in Public Service's Rate Schedule FERC No. 54.

Public Service requests an effective date of January 1, 2000 for this filing. The amended agreement is pursuant to a negotiated settlement between Public Service and Yampa in the merger between NSP and NCE which formed Xcel Energy.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER01–442–000]

Take notice that on November 14, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Public Utility District No. 1 of Chelan County (Chelan), as Transmission Customer.

A copy of the filing was served upon Chelan.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–443–000]

Take notice that on November 14, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 100 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply proposes to make service available as of November 13, 2000 to UGI Development Company.

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, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER01–445–000]

Take notice that on November 14, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Green Mountain Power Corporation

[Docket No. ER01–448–000]

Take notice that on November 14, 2000, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for Village of Jacksonville to take service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Green Mountain Power Corporation

[Docket No. ER01–446–000]

Take notice that on November 14, 2000, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for Washington Electric Cooperative to take service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Green Mountain Power Corporation

[Docket No. ER01–449–000]

Take notice that on November 14, 2000, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for Village of Northfield Electric Department to take

service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Green Mountain Power Corporation

[Docket No. ER01–447–000]

Take notice that on November 14, 2000, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for Readsboro Electric Light Department to take service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: December 5, 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. 00–30197 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Extension of Time for Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 21, 2000.

In light of newspaper publication problems, the Commission hereby extends the comment date to December 29, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 7115–031.

c. *Date Filed:* June 23, 2000.

d. *Applicant:* Homestead Energy Resources, LLC.

e. *Name of Project:* George W. Andrews.

f. *Location:* At the Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles B. Mierek, Homestead Energy Resources, LLC., 5250 Clifton-Glendale Rd., Spartanburg, SC 29307–4618, (864) 579–4405.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions:* December 29, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the Project Number (7115–031) on any comments or motions filed.

k. *Description of Amendment:* Pursuant to Sections 4.200(c) and 4.202(a) of the Commission's regulations and Public Law No. 106–213, the applicant requests that its license be amended to extend the deadline for commencement of construction for 3 consecutive 2-year periods. The applicant also requests that completion of construction be extended by an additional four years from any extended commencement of construction date that the Commission grants.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This Filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments— Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–30203 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 21, 2000.

This constitutes notice, in accordance with 18 CFR 385.220(h), of the receipt of exempt and prohibited off-the-record communications.

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days.

None were received.

David P. Boergers,

Secretary.

[FR Doc. 00–30209 Filed 11–27–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Proposed Settlement Agreements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreements; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of proposed settlement agreements in *American Chemistry Council, et al.* v. *EPA*, No. 94–1359 and consolidated cases (D.C. Cir.), and *National Environmental Development Association's Clean Air Regulatory Project* v. *EPA*, No. 94–1511 and consolidated cases (D.C. Cir.). These cases concern respectively: (1) the rule establishing General Provisions for National Emission Standards for Hazardous Air Pollutants issued under Clean Air Act Section 112 (59 FR 12430, March 16, 1994), and (2) the rule establishing procedures for equivalent emission limitations by permit under Clean Air Act Section 112(j) (59 FR 26449, May 20, 1994). The proposed settlement agreements were lodged with the United States Court of Appeals for the District of Columbia Circuit on October 26, 2000.

DATES: Written comments on the proposed settlement agreements must be received by December 28, 2000.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Copies of the proposed settlement agreements are available from Phyllis J. Cochran, (202) 564–7606. Copies of the proposed settlement agreements were also lodged in the respective cases with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on October 26, 2000.

SUPPLEMENTARY INFORMATION: In 1994, EPA promulgated a final rule establishing General Provisions for National Emission Standards for Hazardous Air Pollutants issued under Clean Air Act Section 112 (59 FR 12430, March 16, 1994), and a final rule establishing procedures for equivalent emission limitations by permit under Clean Air Act Section 112(j) (59 FR 26449, May 20, 1994). Various businesses and trade associations filed petitions in the D.C. Court of Appeals challenging various aspects of those final rules. These petitions were consolidated in *American Chemistry Council, et al.* v. *EPA*, No. 94–1359 et al. (includes petitioners American Chemistry Council, Coalition for Clean Air Implementation, General Electric Company, American Petroleum Institute, National Mining Association, and American Forest and Paper Association), and *National Environmental Development Association's Clean Air Regulatory Project* v. *EPA*, No. 94–1511 et al. (D.C. Cir.) (includes petitioners National Environmental Development Association's Clean Air Regulatory Project, Coalition for Clean Air Implementation, Electronic Industries Clean Air Task Force, American Chemistry Council, and Clean Air Implementation Project).

Thereafter EPA entered into settlement discussions with the various petitioners in these consolidated cases. These discussions continued over a period of years and have now culminated in tentative negotiated settlements in the pending cases. Under the terms of these tentative settlement agreements as lodged with the Circuit Court on October 26, 2000, EPA has agreed to issue a notice of proposed rulemaking to amend the rules in question within four months of the date the agreements were executed. The text of that notice of proposed rulemaking, and of the proposed amendments to the rules, has been agreed to by the parties, and is available upon request.

The proposed amendments include changes responsive to some but not all of the concerns expressed by the petitioners in the associated cases. The proposed amendments also include a number of revisions to the rules in question deemed otherwise desirable by EPA and agreed to by the petitioners.

The proposed amendments to the General Provisions rule, 40 CFR part 63, subpart A, include revisions addressing the presumptive applicability of the General Provisions to individual Maximum Achievable Control Technology (MACT) standards; the definitions of ''affected source'' and other terms; prohibited activities and circumvention; preconstruction review; startup, shutdown, and malfunction plans; compliance provisions; monitoring requirements; notification requirements; and recordkeeping and reporting requirements. The proposed amendments to the rule governing equivalent emission limitations by permit under Clean Air Act Section 112(j), 40 CFR part 63, subpart B, §§ 63.50–60.56, include revisions addressing applicability requirements, definitions, the approval process for a section 112(j) determination, the content of a section 112(j) application, preconstruction review, and enforcement liability. The proposed amendments to both regulations also include a number of revisions addressing the relationship between sequential case-by-case MACT determinations under section 112(g) and section 112(j), and the relation between case-by-case MACT determinations and a subsequently promulgated MACT standard issued under section 112(d) or section 112(h).

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreements from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the settlement agreement will then be executed by the parties.

Dated: November 20, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–30278 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6908–9]

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants in FY 2001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines for the award of Clean Water Act Section 319 nonpoint source grants in FY 2001. The guidelines are intended to assist States, Territories, and Tribes in identifying the process and criteria to be used in distributing FY 2001 319 grants. The process and criteria are generally the same as were used last year, which are provided in four documents: *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years* (May 1996); *Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999* (August 18, 1998); *Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act* (December 4, 1998); and *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000* (December 21, 1999). The guidance provided by each of these four documents remains fully in effect except to the extent that they are specifically modified in today's guidelines.

DATES: The guidelines are effective November 28, 2000.

ADDRESSES: Persons requesting additional information or a complete draft of the document should contact Stacie Craddock at (202) 260–3788; craddock.stacie@epa.gov; or U.S. Environmental Protection Agency (4503–F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information or a complete draft of the document should contact Stacie Craddock at (202) 260–3788; craddock.stacie@epa.gov; or U.S. Environmental Protection Agency (4503–F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The complete text of today's guidelines, as well as each of the supplemental documents listed below, is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage <http://www.epa.gov/owow/nps>.

SUPPLEMENTARY INFORMATION: Congress enacted Section 319 of the Clean Water Act in 1987, establishing a national program to control nonpoint sources of water pollution. Section 319 authorizes EPA to issue annual grants to States, Territories, and Tribes who have EPA-approved nonpoint source assessment reports and nonpoint source management programs. Section 319 requires States, Territories and Tribes to provide at least a 40 percent non-Federal dollar match.

The Section 319 grants process, criteria, and schedules are set forth in four documents: *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years* (May 1996); *Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999* (August 18, 1998); *Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act* (December 4, 1998); and *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000* (December 21, 1999).

The Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (May 1996) is a product of joint discussions in 1995 and 1996, with representatives of EPA Headquarters, Regions and the States, under the auspices of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). These discussions resulted in new national Section 319 program and grant guidance jointly signed by EPA and ASIWPCA and issued by EPA on May 16, 1996. The guidance reflects a joint commitment to upgrade States' and Territories' nonpoint source management programs to incorporate nine key program elements designed to achieve and maintain beneficial uses of water.

On August 18, 1998, Robert H. Wayland III (Director, Office of Wetlands, Oceans, and Watersheds) issued a memorandum entitled *Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999.* This document supplemented the 1996 guidance with guidelines for the use of incremental (in excess of $100 million appropriated by Congress) Section 319 nonpoint source grants in FY 1999. These guidelines were consistent with the goals of the *Clean Water Action Plan*, released by the President in February 1998. A central aspect of the Clean Water Action Plan is its set of actions that are designed to promote a renewed focus by States, Territories, and Tribes to identify watersheds with the most critical water quality problems and to work together to focus resources and implement effective strategies to solve these problems. A key way in which States, Territories, and Tribes would do this is to create Unified Watershed Assessments that identify watersheds that do not meet clean water and other natural resource goals and where preventative action is needed to sustain water quality and aquatic resources, and to develop Watershed Restoration Action Strategies for watersheds most in need of restoration. In accordance with the Clean Water Action Plan and the August 1998 guidelines, States and Territories were to focus incremental Section 319 grant funds on implementing their Watershed Restoration Action Strategies.

A subsequent memorandum issued by Robert Wayland on December 4, 1998, entitled *Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act*, expanded upon and reiterated the need for States and Territories to use their incremental Section 319 grant funds to support implementation of actions called for in Watershed Restoration Action Strategies.

On December 21, 1999, Robert Wayland issued a memorandum entitled *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000.* The guidance was intended to supplement the three aforementioned documents by adding discussion on: use of Section 319 funds for animal feeding operation strategies; increase of grant funds available to Indian Tribes; use of incremental Section 319 grant funds for Watershed Restoration Action Strategies; and use of Section 319 grant funds to support Clean Lakes activities and American Heritage Rivers; and discussion of possible expansion of the computer-based Grants Reporting and Tracking System.

The guidance provided by each of these four documents remains fully in effect except to the extent that they are specifically modified in this year's supplemental guidelines, as summarized immediately below:

1. The incremental $100 million may be used to implement the nonpoint source components of total maximum daily loads (TMDLs) in all watersheds and of watershed restoration action strategies in Category I watersheds.

2. The $38 million additional funds appropriated by Congress for FY 2001 may be used to implement projects to control nonpoint source pollution throughout the State, Territory or Tribe. In other words, these additional funds are treated as part of the ''base funds'',

for a total base amount of $134.5 million for States. EPA strongly encourages the States and Territories to use these additional funds to implement WRASs in Category I watersheds and to implement TMDLs throughout the State.

3. Regions should include in each 319 grant a written determination that the State, Territory, or Tribe has made satisfactory progress during the previous year to meet the schedule of milestones specified by the State, Territory, or Tribe in its nonpoint source management program.

4. For each State or Territory that has a conditionally approved coastal nonpoint pollution control program under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), the Section 319 grant will provide that at least $100,000 of the grant dollars will be devoted to specific actions that are designed to meet all outstanding conditions.

The full text of the *Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants in FY 2001* is published below.

Dated: November 21, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

Memorandum

Subject: Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants in FY 2001.

From: Robert H. Wayland III, Director, Office of Wetlands, Oceans, and Watersheds.

To: EPA Regional Water Division Directors, State and Interstate Water Quality Program Directors.

I am pleased to inform you that Congress has appropriated $238 million in FY 2001 for States, Territories, and Tribes to help them implement their nonpoint source (NPS) management programs under Section 319 of the Clean Water Act (CWA). This funding increase of $38 million will enable the States, Territories, and Tribes to strengthen their efforts to implement effective, upgraded NPS programs. This memorandum provides guidelines for the award of the grants under Section 319(h) in FY 2001. We have also attached in Appendix A the allocations for each State and Territory based upon the long-standing 319 allocation formula, including a set-aside for Tribes with approved NPS programs.

Nonpoint Source Grants to Indian Tribes

EPA is extremely pleased that in FY 2001, at EPA's request, Congress has again authorized removal of the ⅓% cap in Section 518(f) on awarding nonpoint source grants to Indian Tribes. We are very pleased with the number of excellent Tribal grant proposals that we received in FY 2000, which exceeded the $2.5 million provided for Tribal nonpoint source grants in FY 2000. In light of our experience in FY 2000, we are setting aside $6 million for grants to Tribes in FY 2001. We are currently preparing a separate memorandum detailing the funding process that will be used in FY 2001 to make Section 319 grant awards to Tribes. We are currently circulating a draft of that memorandum to EPA Regions and to Tribes for review and comment prior to finalizing the memorandum.

States' and Territories' Upgraded Nonpoint Source Programs

I would like to take this opportunity to express my great appreciation and admiration for the fine work that the States and Territories have done during the past several years to upgrade their nonpoint source management programs. I am confident that these upgraded programs will provide the basis for accelerating our success in solving NPS problems and in achieving our water quality goals.

The States' and Territories' upgraded programs collectively represent a tremendous effort by the States and Territories to strengthen their programs. The increased level of effort and sophistication of the States' and Territories' programs is reflected in many ways. First, the States and Territories have developed objective long-term and short-term goals and milestones that provide a framework for future actions over the next five, ten, and fifteen years. Second, the States and Territories have developed plans to enhance their existing partnerships among State, Territory, and Federal agencies; industry, agriculture, and environmental groups; and other interested groups. Third, they have targeted their nonpoint source funds and technical assistance efforts to geographic priorities, such as 303(d)-listed waters and Category I watersheds identified through the States' and Territories' Unified Watershed Assessments.

Other key State and Territory program improvements include increased and enhanced coordination with key related programs such as the coastal nonpoint pollution control program under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA); new and increased State funding programs to address nonpoint sources well above the levels needed to match the Federal 319 dollars, including both significant new State nonpoint source funding programs as well as the increased use of State revolving loan funds in many States to address nonpoint source pollution; and increased development of new State and Territory enforcement authorities to address high-priority problems such as animal waste and stormwater.

EPA Headquarters staff have begun to prepare brief summaries of the most salient aspects of each approved State and Territory's upgraded nonpoint source program, and we will forward them to each of you when they are complete.

State/EPA NPS Partnership

To build upon this success, the States and EPA have developed and are beginning to implement a new State/EPA NPS Partnership. The purpose of this new cooperative process is to identify, prioritize, and address the needs of States, Territories, and Tribes for technical, programmatic, and financial assistance to overcome any remaining obstacles to successfully implementing your nonpoint source programs. Building upon the three-day meeting that EPA and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) held in April 2000 in Riverside, California, we have formed seven work groups that have already begun the work of identifying the States', Territories', and Tribes' highest needs and jointly developing and implementing appropriate plans and strategies to address those needs. The work groups are:

1. Watershed Planning and Implementation, including total maximum daily loads (TMDLs)
2. Rural Nonpoint Sources
3. Urban Nonpoint Sources
4. NPS Grants Management
5. NPS Capacity Building and Funding
6. Information Transfer and Outreach
7. NPS Results (discussed below)

I am pleased that, to date, many State and EPA Regional staff have already volunteered to co-chair or join one or more of the seven work groups that are guiding this State/EPA NPS Partnership. I welcome you to encourage additional State, Territorial and Tribal experts to get involved in this process and provide assistance in solving our remaining nonpoint source problems. Any experts interested in getting involved should contact either Dov Weitman, Chief of EPA's Nonpoint Source Control Branch Chief, at (202) 260–7088, weitman.dov@epa.gov, or Linda Eichmiller, Deputy Director of ASIWPCA, at (202) 898–0905, l.eichmiller@asiwpca.org.

General Guidelines for NPS Grants Are Unchanged in FY 2001

The Section 319 grants process and criteria to be used in FY 2001 are generally the same as were used last year. The process, criteria, and schedules are set forth in four documents: (1) *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years* (May 1996); (2) *Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999* (August 18, 1998); (3) *Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act* (December 4, 1998); and *Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000* (December 21, 1999). The guidance provided by each of these four documents remains fully in effect except to the extent that they are specifically modified in this memorandum, as summarized immediately below:

1. The incremental $100 million may be used to implement the nonpoint source components of TMDLs in all watersheds and of watershed restoration action strategies in Category I watersheds.

2. The States and Territories will receive an additional $34.5 million above the FY 2000 level of $200 million; Tribes will receive an additional $3.5 million that is being added to the Tribal set-aside to provide a total of $6 million for Tribes in FY 2001. Each State and Territory may use its additional funds to implement projects to control nonpoint source pollution throughout the State or Territory. In other words, these additional funds are treated as part of the ''base funds'', for a total base amount of $134.5 million for States. However, EPA strongly encourages the States and Territories to use these new funds to implement WRASs in Category I watersheds and to implement TMDLs throughout the State or Territory. In other words, they may be spent in the same manner as the other $100 million of ''base funds''.

3. Regions should include in each 319 grant a written determination that the State, Territory, or Tribe has made satisfactory progress during the previous year to meet the schedule of milestones specified by the State, Territory, or Tribe in its nonpoint source management program.

4. For each State or Territory that has a conditionally approved coastal nonpoint pollution control program under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), the Section 319 grant will provide that at least $100,000 of the grant dollars will be devoted to specific actions that are designed to meet all outstanding conditions.

Each of the documents listed above is attached to the electronic version of this memorandum and also may be reviewed online or downloaded from the nonpoint source website at www.epa.gov/owow/nps.

Watershed Restoration Action Strategies and TMDLs

As discussed in my December 21, 1999, memorandum and the Clean Water Action Plan, the incremental 100 million Section 319 dollars are to be used to implement Watershed Restoration Action Strategies (WRASs) to control nonpoint source pollution. As in the previous two years, however, States and Territories may use up to 20 percent of the incremental funds (as well as up to 20 percent of the ''base'' funds) to develop WRASs. We recommend that EPA Regions and the States and Territories review the *Framework for developing Unified Watershed Assessments (''UWA'') and Watershed Restoration Action Strategies* (June 9, 1998), and the memorandum, ''*Unified Watershed Assessment Framework: 2000 Supplement*'', published jointly by USDA and EPA on November 30, 1999.

In FY 1999 and 2000, we recognized that many States and Territories had not completed development of WRASs or may have completed development of only one or two. Therefore, we authorized the funding of critical components of a WRAS that is not yet complete but that the State or Territory has committed to completing, provided that those components have been developed and are ready for implementation. We encouraged States and Territories to begin funding the implementation of nonpoint source components of TMDLs that have been approved under Section 303(d) of the Clean Water Act in Category I watersheds. Similarly, we stated that implementation of CZARA Section 6217 management measures in Category I watersheds, or of a program that addresses the results of a completed source water assessment, should be considered for funding prior to completion of the entire WRAS.

In my December 21, 1999, memorandum, I stated our expectation that, beginning with the FY 2001 grants cycle, only completed or fully drafted WRASs in Category I watersheds would be eligible for funding with the incremental Section 319 dollars. I am reiterating at this time that the incremental ($100 million) FY 2001 funds may be used only to implement completed or fully drafted WRASs, or to develop WRASs (using up to 20% of the incremental funds), with one exception discussed immediately below.

It is apparent to all of us who are working in nonpoint source management and, more generally, watershed management, that TMDLs have become a critical tool for addressing water quality impairments at the watershed level. This fact has manifested itself on many levels. First, as indicated above, most State and Territory nonpoint source programs have been re-aligned in the past few years to focus on implementing watershed projects that help solve identified water quality problems in high-priority waters, most of which are listed by the States and Territories under Section 303(d) of the Clean Water Act. Second, many WRASs themselves are being developed on a foundation established by a TMDL or set of TMDLs. Third, most States' TMDL programs have by now been the subject of litigation that has resulted in court orders which require the development of TMDLs that address both point sources and nonpoint sources in accordance with expeditious schedules. All of these factors have properly focused greatly increased attention on solving identified water quality problems in impaired waters.

These factors all point to the need to increasingly focus Section 319 grant dollars on implementing approved TMDLs, under EPA's existing effective TMDL regulations and guidance, for nonpoint sources. Most Section 303(d) waters are contained in UWA Category I watersheds. However, where a waterbody impaired by nonpoint sources is not contained within a Category I watershed, EPA believes that it is essential that the waterbody be eligible for incremental 319 funds to help bring the waterbody back into compliance with water quality standards. Therefore, beginning in FY 2001, incremental Section 319 funds may be used to fund: (1) the development of WRASs and the implementation of completed or fully drafted WRASs in Category I watersheds, and (2) the development and implementation of approved TMDLs for any 303(d)-listed waterbodies.

States and Territories may use up to 20% of both the base and incremental dollars to fund the development of the nonpoint source components of WRASs and TMDLs and to conduct related assessment activitites; at least 80% of the funds must be used for

implementation activities. We recognize the importance of TMDL development activities. For that reason, EPA has not only made 20% of both the base and incremental Section 319 funding available for this purpose, but EPA also requested, and Congress has appropriated, significantly increased funding under Section 106 of the CWA that can be used for TMDL development. With regard to the remaining 80% of Section 319 funds, however, it is essential that they be devoted to the primary purpose of Section 319—implementing actions that will directly assist in solving identified nonpoint source pollution problems.

One question that is likely to arise this year is how the additional $34.5 million that is being awarded to States and Territories in FY 2001 should be classified and spent. EPA's request to Congress for an increase in FY 2001 Section 319 funds was intended to provide further support for States and Territories to solve their high-priority water quality problems. EPA is providing States and Territories with the flexibility to select those implementation activities that they believe are of the highest priority. EPA encourages States and Territories to use these funds, like the incremental $100 million, to implement WRASs in Category I watersheds and TMDLs to restore 303(d)-listed waterbodies. Finally, as indicated in the preceding paragraph, States and Territories may use up to 20% of the additional $34.5 million for assessment and development activities, including the development of TMDLs and WRASs.

Like last year, Section 319(h) grants to States and Territories in FY 2001 should clearly indicate which activities will be implemented using the base funds ($134.5 million) and which projects will be supported by the incremental ($100 million) funds. The work plans should clearly identify: (1) The Category I watersheds and sub-watersheds where the incremental funds will be used to implement WRASs and TMDLs, and (2) the activities to be undertaken to assist in the assessment and development of WRASs and TMDLs. Activities supported by the incremental funds should be separately tracked.

State and Territory Coastal Nonpoint Pollution Control Programs

In 1997 and 1998, EPA and the National Oceanic and Atmospheric Administration (NOAA) approved, subject to certain conditions, the coastal nonpoint pollution control programs (''coastal nonpoint programs'') that States and Territories submitted pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). Under CZARA, States and Territories were required to include in their coastal nonpoint programs (1) management measures in conformity with the guidance published by EPA as required by Section 6217(g) of CZARA, and (2) enforceable policies and mechanisms that ensure implementation of the management measures. The NOAA/EPA approval documents contained findings that identified those management measures with which the State's or Territory's program did or did not conform, and those measures for which the program did or did not have enforceable policies and mechanisms that ensure implementation.

Some States' and Territories' conditional approvals have recently expired, and many more are set to expire during the next year. For the reasons discussed below, and subject to the further conditions discussed below, NOAA and EPA have decided to grant these States and Territories, where needed, no more than an additional two years to complete the development and obtain full approval of their coastal nonpoint program. The most significant condition is that any FY 2001 Section 319 grant to a State or Territory that has conditional approval of its CZARA program must include a provision that the State or Territory will devote at least $100,000 of its FY 2001 319 grant dollars to specific actions that are designed to meet all outstanding conditions.

Discussion

In 1997 and 1998, twenty-nine States and Territories received ''conditional approval'' of their coastal nonpoint programs in accordance with the provisions of CZARA and NOAA/EPA guidance. This effectively stayed the provisions of Section 6217(c) that provide for grant reductions for unapproved programs. Each State's or Territory's conditions required the State or Territory to address identified shortcomings in its management measures or in its enforceable policies and mechanisms to ensure implementation of particular management measures. Each condition stated a deadline for completion, generally within 3 years after conditional approval and, in a few instances, up to 5 years.

Despite significant efforts by many States and Territories to complete the development of their coastal nonpoint programs, only three States and one Territory have received full approval to date. Fourteen States and Territories are scheduled to have all of their conditions expire by the end of 2000. Eleven other States and Territories will have all of their conditions expire sometime in 2001.

NOAA and EPA recognize that many States and Territories have encountered significant difficulties in completing the program development process expeditiously, for instance:

- Appropriations for State and Territory participation have been limited and no new appropriations were provided to NOAA and EPA for program development support purposes;
- The statute sets ambitious goals that address a number of politically difficult issues such as imposing a mandatory ''enforceable policy'' approach on traditionally voluntary programs;
- There has been, in some states, a lack of support for the adoption of specific nonpoint source management measures.

NOAA and EPA recognize these limitations, but agree that in the interest of improving the quality of coastal waters and other coastal resources, efforts to adopt full CZARA programs should continue. We have thus established the following process to assist States and Territories in a cooperative effort to achieve a goal of attaining full approval as soon as possible within the next two years, recognizing that for some States and Territories the completion of products is the only principal action delaying approval.

Approach

On page 5 of the 1995 guidance entitled ''Flexibility Guidance for State Coastal Nonpoint Programs'', NOAA and EPA stated that States and Territories may receive ''up to five years after conditional approval to meet conditions. * * *'' In light of the current expectation that a significant majority of States and Territories that were given 3-year conditions will not meet these conditions prior to their expiration dates, NOAA and EPA believe that it is in the best interest of assuring the completion of robust State and Territory CZARA programs to extend the current conditions up to a total of no more than 5 years where needed. This action is in conformance with the five year timeframe authorized in the 1995 guidance, and will be coupled with the steps outlined below to help the States and Territories meet all conditions by the end of their overall 5-year conditional approval period:

1. Draft National Report

a. By early 2001, NOAA and EPA will issue a draft National Report on the current status of each of the

conditionally approved State and Territory programs. The report will highlight State and Territory successes and obstacles in developing and implementing coastal nonpoint programs to protect coastal waters and will also include a State-by-State summary of the conditions that remain and the necessary actions to be taken to meet the conditions. Additionally, in certain cases, activities taking place in other related programs (*e.g.*, implementation of TMDLs in coastal waters that will simultaneously address additional management measures intended to protect coastal water quality, and implementation of stormwater construction management measures under Phase II of the NPDES stormwater program) may expedite the completion of the conditions, and these programs and activities will be reflected in the National Report.

b. NOAA and EPA will provide the States, Territories, and other interested persons an opportunity to review and comment on the draft National Report. After receiving the comments and making appropriate changes, NOAA and EPA will publish the final report by late Spring 2001.

2. EPA and NOAA, having identified those States and Territories that are currently close to obtaining full approval, will target assistance to those programs to achieve approval within the next year.

3. EPA, NOAA, and each State and Territory will develop a workplan to address the significant remaining issues in each State and Territory, with the intension of achieving full approval as soon as feasible but in all cases within the two-year extension.

4. By late Spring, 2001, EPA and NOAA will, working closely with the States and Territories, develop a National Strategy to assist the States and Territories in achieving full approval of their programs. This National Strategy will include a summary of the State and Territory workplans identified in item 3 immediately above; recommended approaches to provide financial or other incentives to promote States' and Territories' progress in completing their programs; and targeted technical assistance workshops that address those management measures or other issues that have proven the most difficult for State and Territory coastal nonpoint programs to successfully address.

5. To assure that States and Territories make progress over the next two years, EPA and NOAA will, in FY 2001 grants, direct that the States and Territories dedicate a reasonable portion of their grant funds towards finalizing these programs. Specifically, EPA will direct that each State and Territory with conditional approval must devote at least $100,000 of its FY 2001 319 grant dollars to specific actions that are designed to meet all outstanding conditions (and, for the four States that do not yet have conditional approval, to develop new coastal nonpoint programs) for NOAA and EPA approval. NOAA will use its grant process under its laws to achieve corresponding dedication of funds to meet all outstanding conditions.

To effectuate this requirement, the FY 2001 Section 319 grants issued by EPA's regional offices to States and Territories that have conditional approval at the time the grants are issued will include the following grant condition:

''[Name of State or Territory] will devote at least $100,000 of its FY 2001 Section 319 grant dollars to specific actions that are designed to meet all outstanding Section 6217 conditions in its conditional approval under Section 6217 of CZARA. This grant condition will expire immediately upon full EPA approval of [name of State or Territory]'s coastal nonpoint program.''

Conclusion

The development and implementation of fully approved CZARA programs provides to States and Territories an excellent opportunity to realize their goals of achieving cleaner coastal waters through the implementation of the best available, economically achievable practices that have been proven to work. Moreover, these will help strengthen the set of tools that States and Territories utilize to implement their recently upgraded nonpoint source management programs under Section 319 of the CWA.

Reporting NPS Results

Working under the umbrella of the newly formed EPA/State NPS Partnership discussed above, EPA and the States have formed a Nonpoint Source Results Workgroup, whose first task is to reevaluate and, as appropriate, revise the current reporting requirements for Section 319 grants. With the ever-increasing amount of Section 319 funds (over a billion dollars appropriated in FY 1990–2000), EPA and the States and Territories must be able to assure the public and the Congress that the funds are being used in both a legally appropriate and environmentally effective manner. This work group met in St. Louis in February 2000 and has held several conference calls since that time to develop an agreed-upon set of appropriate data elements that will do the best job, with the least burden, of telling us and our constituencies what we are accomplishing with the funds. Once the work group has developed a workable draft proposal, we intend to provide a thorough opportunity for all States, Territories and EPA Regions to review and comment on the proposal before it is implemented.

We intend that the revised set of NPS reporting elements will be implemented beginning with the FY 2001 grants cycle. We will modify the associated computer-based data system, the Grants Reporting and Tracking System (GRTS), to accommodate the modified data elements that are to be reported. In addition, to provide a broad variety of user benefits, we have just begun efforts to Web-enable GRTS. (This system will still require protected passwords to enter and use the system, to assure data integrity.) We anticipate that this effort will be completed within 6 months. Furthermore, we plan to link GRTS with the new data system being constructed for both section 305(b) and 303(d) data (called WATERS, which in turn will be supported by the Comprehensive Assessment and Listing Methodology, or CALM). Thus, 319-funded watershed projects will be linked through geo-locational data to water quality status and improvement data contained in WATERS, providing a long-term ability to relate actions on the ground to improvements in water quality.

Determining Satisfactory Progress

Section 319(h)(8) of the CWA provides that no Section 319 grant may be made to a State (or Territory) in any fiscal year unless the Administrator ''determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).'' Section 319(b)(2) provides that States' and Territories' approved Section 319 management programs shall include:

> A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

The May 1996 Nonpoint Source Program and Grants Guidance explains: ''The Region will determine, based on review of annual reports, other documents and discussions with the State, whether the State's progress for the previous fiscal year was satisfactory.'' The guidance does not,

however, state what form the determination must take. In discussions with the Regions, we have noted the Regions have adopted various methods to make determinations of satisfactory progress. We are providing the following guidelines to assure that all 319 grants comport with applicable legal requirements.

Beginning in FY 2001, Regions should include in each Section 319 grant (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the State or Territory has made satisfactory progress during the previous fiscal year to meet the schedule of milestones specified by the State or Territory in its nonpoint source management program. Regions should base these determinations on annual reports, mid-year and end-of-year reviews, and other documents and discussions with the State or Territory that provide information relevant to making these determinations, and should include a brief explanation that supports their determinations.

Conclusion

With the new grants cycle in FY 2001, we are entering the second decade of nonpoint source program implementation. With newly upgraded State programs, enlarged resources that are targeted more effectively than ever before, and a broad array of technical, programmatic, and regulatory tools, I envision that our successes during the next ten years in restoring waterbodies impaired by nonpoint source pollution and protecting threatened waters from nonpoint source pollution will accelerate and eclipse those of the previous decade. I look forward to working with you to make this vision a reality.

If you have any questions or comments, please contact me at 202–260–7166 or wayland.robert@epa.gov, or have your staff contact Dov Weitman, Chief of the Nonpoint Source Control Branch, at 202–260–7088 or weitman.dov@epa.gov.

Attachments (to the Emailed Version of This Guidance)

1. Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (May 1996)
2. Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999 (August 18, 1998)
3. Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act (December 4, 1998)
4. Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000 (December 21, 1999)

cc: State Nonpoint Source Coordinators
EPA Regional Water Quality Branch Chiefs
EPA Regional Nonpoint Source Coordinators
EPA Regional Clean Lakes Coordinators
Kathy Gorospe
Robbi Savage (ASIWPCA)

Appendix A

FY2001 § 319 GRANT ALLOCATIONS

	Base	Increment	Total
REGION 1	7,512.7	5,691.3	13,204.0
CONNECTICUT	1,291.8	978.6	2,270.4
MAINE	1,549.0	1,173.5	2,722.5
MASSACHUSETTS	1,790.0	1,356.0	3,146.0
NEW HAMPSHIRE	1,009.1	764.4	1,773.5
RHODE ISLAND	895.1	678.1	1,573.2
VERMONT	977.7	740.7	1,718.4
REGION 2	7,790.6	5,902.0	13,692.6
NEW JERSEY	2,202.1	1,668.3	3,870.4
NEW YORK	4,492.4	3,403.3	7,895.7
PUERTO RICO	739.5	560.2	1,299.7
VIRGIN ISLANDS	356.6	270.2	626.8
REGION 3	11,480.9	8,697.6	20,178.5
DELAWARE	947.6	717.9	1,665.5
DIST. OF COL.	825.3	625.2	1,450.5
MARYLAND	1,763.0	1,335.6	3,098.6
PENNSYLVANIA	3,887.7	2,945.2	6,832.9
VIRGINIA	2,601.0	1,970.4	4,571.4
WEST VIRGINIA	1,456.3	1,103.3	2,559.6
REGION 4	22,900.4	17,348.8	40,249.2
ALABAMA	2,592.9	1,964.4	4,557.3
FLORIDA	5,177.3	3,922.2	9,099.5
GEORGIA	3,088.9	2,340.1	5,429.0
KENTUCKY	2,262.5	1,714.0	3,976.5
MISSISSIPPI	2,536.4	1,921.5	4,457.9
N. CAROLINA	3,074.3	2,329.0	5,403.3
S. CAROLINA	2,063.1	1,562.9	3,626.0
TENNESSEE	2,105.0	1,594.7	3,699.7
REGION 5	24,268.4	18,385.1	42,653.5
ILLINOIS	5,440.3	4,121.4	9,561.7
INDIANA	2,964.7	2,246.0	5,210.7
MICHIGAN	3,864.4	2,927.6	6,792.0
MINNESOTA	4,564.0	3,457.5	8,021.5
OHIO	4,014.1	3,041.0	7,055.1
WISCONSIN	3,420.9	2,591.6	6,012.5
REGION 6	15,789.0	11,961.4	27,750.4
ARKANSAS	2,599.4	1,969.2	4,568.6
LOUISIANA	3,215.5	2,436.0	5,651.5

FY2001 § 319 GRANT ALLOCATIONS—Continued

	Base	Increment	Total
NEW MEXICO	1,615.3	1,223.7	2,839.0
OKLAHOMA	2,091.0	1,584.1	3,675.1
TEXAS	6,267.8	4,748.4	11,016.2
REGION 7	10,929.6	8,280.1	19,209.7
IOWA	3,023.5	2,290.6	5,314.1
KANSAS	2,442.4	1,850.3	4,292.7
MISSOURI	3,055.1	2,314.5	5,369.6
NEBRASKA	2,408.6	1,824.7	4,233.3
REGION 8	11,280.2	8,545.6	19,825.8
COLORADO	1,672.1	1,266.7	2,938.8
MONTANA	1,749.8	1,325.6	3,075.4
N. DAKOTA	3,192.3	2,418.4	5,610.7
S. DAKOTA	2,162.9	1,638.6	3,801.5
UTAH	1,214.0	919.7	2,133.7
WYOMING	1,289.1	976.6	2,265.7
REGION 9	12,436.3	9,421.5	21,857.8
ARIZONA	2,170.7	1,644.5	3,815.2
CALIFORNIA	7,051.6	5,342.0	12,393.6
HAWAII	1,019.9	772.7	1,792.6
NEVADA	1,124.3	851.7	1,976.0
TRUST TER.	0.0	0.0	0.0
AM. SAMOA	356.6	270.2	626.8
GUAM	356.6	270.2	626.8
MARIANAS	356.6	270.2	626.8
REGION 10	7,611.9	5,766.6	13,378.5
ALASKA	1,609.5	1,219.3	2,828.8
IDAHO	1,633.0	1,237.1	2,870.1
OREGON	1,831.4	1,387.4	3,218.8
WASHINGTON	2,538.0	1,922.8	4,460.8
TOTAL to States	132,000.0	100,000.0	232,000.0
Tribal	6,000.0	.....	6,000.0
GRAND TOTAL	138,000.0	100,000.0	238,000.0

[FR Doc. 00–30279 Filed 11–27–00; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Case-Level Report.
OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option) include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. Disagregate data is used to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of Respondents	Number of Responses per Respondent	Average Burden Hours per Response	Total Burden Hours
ACF–801	56	4	20	4,480
Estimated Total Annual Burden Hours	.....	.....	.....	4,480

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments one: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 22, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–30260 Filed 11–27–00; 8:45 am]

BILLING CODE 4184–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6909–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the USEPA Science Advisory Board (SAB), will meet December 12–14, 2000 in conference room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting will begin by 9:00 a.m. on December 12 and adjourn no later than 2:30 p.m. on December 14. All times noted are Eastern Standard Time. The meeting is open to the public; however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—During this meeting, the RAC intends to draft its review on the Draft Sewage Sludge Dose Modeling Report jointly issued by the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Environmental Protection Agency (EPA) prepared as part of the Sewage Sludge Subcommittee of Interagency Steering Committee on Radiation Standards (ISCORS). The Draft Sewage Sludge Dose Modeling report will assess potential radiation dose from various sewage sludge handling and end/use disposal practices. The estimates will be included in the final Guidance Document to help publicly owned treatment work (POTW) operators better understand and interpret radionuclide data associated with sewage sludge. The charge questions to be answered, include, but are not limited to the following:

(1) Are the dose modeling scenarios reasonable? Does the document adequately explain them?

(2) Are the scenarios sufficiently representative of the major exposure situations?

(3) Are the approaches to obtaining the modeling parameters and distributions scientifically defensible? Is the methodology's approach for characterizing uncertainty appropriate?

Further, the RAC will be conducting a planning session for their Spring 2001 review of the Multi-Agency Radiological Laboratory Protocols (MARLAP) Manual.

Follow-up Teleconference Meeting—If additional questions arise following the meeting that concern the development of the RAC's report on the Draft Sewage Sludge Dose Modeling Report that need clarification or additional discussion, the Committee will address these in a public teleconference meeting that is planned for Wednesday, January 17, 2001, from 12:00–2:00 pm. That meeting, if held, will be hosted out of the same location as the December 12–14, 2000 meeting. Please contact Ms. Medina-Metzger for details on participating in person or via phone. Please check the SAB website (*www.epa.sab/sab*) after January 8, 2001 to determine if this follow-up teleconference meeting will take place or not.

Availability of Materials—A copy of the draft meeting agenda will be available on the SAB website (*www.epa.gov/sab*) approximately two weeks prior to the meeting.

For Further Information—Any member of the public wishing further information concerning either meeting or wishing to submit brief oral comments must contact Ms. Melanie Medina-Metzger, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–5987; FAX (202) 501–0582; or via e-mail at medina-metzger.melanie@epa.gov. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Medina-Metzger no later than noon Eastern Time December 8, 2000. Public comments will be normally limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, easel, etc.), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

For questions pertaining to the Review on the ISCORS Draft Sewage Sludge Dose Modeling Report or on any other topics discussed between the SAB's RAC and the ORIA staff, please contact Dr. Mary E. Clark, (6601J), ORIA, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, D.C. 20460, tel. (202) 564–9348; fax (202)–565–2043; or E-mail: clark.marye@epa.gov.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments

In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments

Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the

SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IMB–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Medina-Metzger at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 21, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–30277 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OEI–100002; FRL–6722–1]

RIN 2070–AD09

Guidance Documents for: Mercury and Mercury Compounds, Polycyclic Aromatic Compounds, Pesticides and Other Persistent Bioaccumulative Toxic (PBT) Chemicals; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: EPA is announcing the availability of three draft guidance documents for certain persistent bioaccumulative toxic (PBT) chemicals which are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). In a rule made final on October 29, 1999, EPA lowered the reporting thresholds of certain PBT chemicals which were already on the EPCRA section 313 list. In addition, EPA added new PBT chemicals to this list, and established the lower reporting thresholds for these chemicals. EPA is requesting comments on these draft guidance documents.

On June 15, 2000, EPA published a **Federal Register** notice, (65 FR 37548)(FRL–6497–9) asking if there was interest in forming a workgroup to assist in the preparation of the final guidance documents. A workgroup has been formed in response to this notice. EPA welcomes additional stakeholders to this workgroup.

DATES: Written comments, identified by the docket control number OEI–100002, must be received by EPA on or before December 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this document.

FURTHER INFORMATION CONTACT: Gail Froiman, (202) 260–0697, e-mail: froiman.gail@epa.gov, for specific information on these documents, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: (703) 412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be interested in this notice if you manufacture, process, or otherwise use aldrin, chlordane, heptachlor, hexachlorobenzene, isodrin, mercury, mercury compounds, methoxychlor, octachlorostyrene, pendimethalin, pentachlorobenzene, polychlorinated biphenyls, certain polycyclic aromatic compounds, tetrabromobisphenol A, toxaphene, and trifuralin. Potentially interested categories and entities may include, but are not limited to:

Category	Examples of Potentially Interested Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. Other types of entities not listed in the table could also be interested. To determine whether your facility may be interested in this notice, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this notice to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under

the ''**Federal Register** — Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/. The draft guidance documents for the Mercury and Mercury Compounds Category, Polycyclic Aromatic Compounds Category and Pesticides and Other Persistent Bioaccumulative Toxic (PBT) Chemicals are available for downloading at http://www.epa.gov/tri.

2. *In person.* The Agency has established an official record for this action under docket control number OEI–100002. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., ''OEI–100002'') in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is: (202) 260–7093.

3. *Electronically.* Submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov.'' Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–100002. Electronic comments on these documents may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to these documents as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background Information

A. What is the Purpose of This Notice?

The purpose of this notice is to make available for comment drafts of three documents. They are entitled:

(1) Emergency Planning and Community Right-to-Know Act—Section 313 Guidance for Reporting Toxic Chemicals: Mercury and Mercury Compounds Category;

(2) Emergency Planning and Community Right-to-Know Act—Section 313 Guidance for Reporting Toxic Chemicals: Polycyclic Aromatic Compounds Category;

(3) Emergency Planning and Community Right-to-Know Act—Section 313 Guidance for Reporting Toxic Chemicals: Pesticides and Other Persistent Bioaccumulative (PBT) Chemicals.

Some of the toxic chemicals discussed in these guidance documents were added to the list of EPCRA section 313 toxic chemicals as part of a final PBT chemical rule (64 FR 58666, October 29, 1999)(FRL–6389–11). The remainder of the chemicals in these three draft documents were previously on the list, and have lower reporting thresholds as a result of the final PBT chemical rule. EPA would like to receive comments on the technical contents of the guidance documents, particularly on the methods of estimating releases and other waste management quantities for these chemicals. Unit I.B. contains information on how to get copies of the draft guidance documents.

EPA is providing two methods through which interested parties may help complete the final version of the PBT technical guidance documents. As always, there will be a 30-day comment period for responding to the draft PBT documents. In addition, EPA will be meeting directly with stakeholders to improve these guidance documents. A workgroup has already been formed for this purpose. EPA welcomes additional stakeholders to this workgroup. If you are interested in participating, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by December 28, 2000.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: November 21, 2000.

Elaine G. Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 00–30280 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59373; FRL–6757–2]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–01–0001. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective November 21, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Prenotice Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–59373. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

IV. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

V. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–01–0001

Date of Receipt: October 13, 2000.

Notice of Receipt: November 9, 2000 (65 FR 67367), (FRL–6754–8).

Applicant: CBI

Chemical: (G) Urethane acrylate

Use:(G) Component of coating with open use

Production Volume: CBI

Number of Customers: CBI

Test Marketing Period: CBI, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

VI. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: November 21, 2000.

Rebecca S. Cool,

Acting Chief, New Chemicals Prenotice Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–30281 Filed 11–27–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

FCC Public Forum on World Radiocommunication Conference 2003

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal Communications Commission will host a public forum on December 1, 2000 to solicit views on improving its preparation process for the next World Radiocommunication Conference.

DATES: Public Forum will be held on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan, International Bureau, Federal Communications Commission at 202–418–0783, *jbuchana@fcc.gov*.

SUPPLEMENTARY INFORMATION: On November 6, 2000, the Federal Communications Commission released a

public notice announcing that it will hold a public forum on December 1, 2000 from 3:00 p.m. to 5:00 p.m. in its Commission Meeting Room. All members of the public are invited to attend, and no advance notice of participation is required. The purpose of the forum is to gather information from the public regarding what the Federal Communications Commission can do to improve its processes and procedures for preparing for the World Radiocommunication Conference in 2003.

Synopsis

The Commission will hold a public forum to solicit views on improving its preparation process for the next World Radiocommunication Conference (WRC–2003). The forum will take place on December 1, 2000 from 3:00 p.m. until 5:00 p.m. in the Commission Meeting Room, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The public is invited to attend. No advance notice of participation is required.

The World Radiocommunication Conferences meet to review and amend the international radio regulations that govern the allocation and use of global and regional spectrum. The Commission seeks input from the public on how to proceed for WRC–2003. The Commission will use the information gathered at this public forum to learn what aspects of the FCC process have been successful in the past and what areas need refinement. The agenda for the forum is attached.

For further information, contact John Giusti at 202–418–1407, Julie Garcia at 202–418–0763, or Julie Buchanan at 202–418–0783.

Agenda

Public Forum to Discuss the FCC's Preparation Process for WRC–2003, December 1, 2000, Commission Meeting Room, 3:00 p.m.–5:00 p.m.

I. Opening Remarks
II. Topics for Discussion
- A. How should the FCC structure and organize its preparation process?
- B. How can the FCC improve its coordination efforts with the industry and with other government participants?
- C. How can the FCC help facilitate consensus among industry participants?
- D. What can the FCC do to ensure that the U.S. is effective at regional and bilateral meetings?
- E. How can the FCC help the U.S. build support for its positions abroad?
  1. How can the FCC work with industry members to influence the positions of other countries?
  2. What can the FCC do to gain support for U.S. positions from other regions?
- F. What additional steps can the FCC take to improve the outcome of the Conference itself?

III. Other items

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–30239 Filed 11–27–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011677–002.

Title: The United States Australasia Agreement.

Parties: Australia-New Zealand Direct Line, CMA CGM SA, Contship Container Lines Limited, Columbus Line, P&O Nedlloyd Limited, Wallenius Wilhelmsen Lines AS.

Synopsis: The proposed amendment would exclude United States West Coast transshipment cargoes from the Agreement's trade participation share arrangements (''TPA''). It would also provide for 12-month share periods beginning each January First, increase allowable shares, provide for resignation from the TPA only at the end of a share period, and provide for a change in share revision negotiation procedures.

Agreement No.: 011734.

Title: Maersk Sealand/Great Western Pacific Slot Charter Agreement.

Parties: A.P. Moller-Maersk Sealand (''MSL'') Great Western Steamship Co.

Synopsis: Under the proposed Agreement, Great Western would charter space aboard vessels operated by MSL in the trade between Busan, South Korea, and inland points via Busan, and the Port of Long Beach, California, and inland United States points via Long Beach. The Agreement will expire on June 30, 2001.

Dated: November 22, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–30316 Filed 11–27–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Cargo Freight Services, Ltd., 1740–A Phenix Parkway, College Park, GA 30349, Officers: Hong Wing Lee, Secretary, (Qualifying Individual), Chun Shing Ip, President

ENR Logistics, 555 W. Redondo Beach Blvd., #203, Gardena, CA 90248, Myung Kook Lee, Sole Proprietor

Southern Logistic Service, 8735 Bellanca Avenue, Unit #B, Los Angeles, CA 90045, Namgene Paik, Sole Proprietor

Cargocare Logistics, Ltd., 34 Harvest Lane, Burlington, NJ 08016, Officer: Gary R. Yetter, President, (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Supplies & Global Logistics, Inc., 3300 S. Gessner, Suite 120, Houston, TX 77063, Officer: Ian G. Buchanan, Director of Operations, (Qualifying Individual)

Margaret J. Zimmer, 8 Torch Pine Court, The Woodlands, TX 77381, Sole Proprietor

Liner Services International, Inc., Stennis Int'l. Airport, 7248 Stennis Airport Drive, Kiln, MS 39556, Officer: Terry D. Liner, President, (Qualifying Individual)

Dated: November 22, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–30315 Filed 11–27–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulation on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 82–Is and supporting statements and approved collection of information instruments(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority To Conduct the Following Survey:

1. Report title: 2001 Survey of Consumer Finance.

Agency form number: FR 3059.

OMB Control number: 7100–0287.

Frequency: One-time survey.

Reporters: U.S. families.

Annual reporting hours: 5,812.5 hours.

Estimated average hours per response: 75 minutes.

Number of respondents: Pretest, 50 families; main survey, 4,600 families. Small businesses are not affected.

General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A of the Federal Reserve Act (12 U.S.C. 225a); the Bank Merger Act (12 U.S.C. 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 and 1843) and 12 U.S.C. 353 and 461. The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2001 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The entire survey will be conducted between November 2000 and December 2001.

Board of Governors of the Federal Reserve System, November 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–30212 Filed 11–27–00; 8:45 am]

BILLING CODE: 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Amendment and Restatement of the Alvin John Huss, Jr., Revocable Trust Agreement dated August 23, 2000, St. Paul, Minnesota; to acquire voting shares of Charter 95 Corporation, St. Paul, Minnesota; and thereby indirectly acquire voting shares of First National Bank of Hudson, Woodbury, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Padgett Enterprises, L.P., Greenleaf, Kansas; Gary W. Padgett and Sue S. Padgett, Greenleaf, Kansas, as Trustees of the Gary W. Padgett Trust No. 1; Sue S. Padgett, Gary W. Padgett, Greenleaf, Kansas, and C. Clyde Jones, Manhatton, Kansas, as Trustees of the Sue S. Padgett Share of the Florence Summerville Trust No. 1; and Gary W. Padgett, Sue S. Padgett, and C. Clyde Jones as Trustees of the Gary W. Padgett Share of the Beryl Padgett Trust No. 1, Greenleaf, Kansas; to acquire voting shares of Padgett Agency, Inc., Greenleaf, Kansas, and thereby indirectly acquire voting shares of The Citizens National Bank, Greenleaf, Kansas.

2. Vernon R. Pfaff and Barbara Ann Pfaff, Fairbury, Nebraska; to acquire voting shares of Antelope Bancshares, Inc., Elgin, Nebraska, and thereby indirectly acquire voting shares of Bank of Elgin, Elgin, Nebraska.

Board of Governors of the Federal Reserve System, November 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30211 Filed 11–27–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Carlson Bancshares, Inc., West Memphis, Arkansas; to merge with Lakeside Bancshares, Inc., Hughes, Arkansas, and thereby indirectly acquire The Planters National Bank of Hughes, Hughes, Arkansas.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Lake Bank Shares, Inc., Employee Stock Ownership Plan, Emmons, Minnesota; to acquire an additional 8.19 percent, thereby increasing their ownership to 38.19 percent, of the voting shares of Lake Bank Shares, Inc., Emmons, Minnesota, and thereby indirectly acquire voting shares of The First State Bank of Emmons, Emmons, Minnesota, and Security Bank Minnesota, Albert Lea, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Prosperity Bancshares, Inc., Houston, Texas, and Prosperity Holdings, Inc., Wilmington, Delaware; to merge with Commercial Bancshares, Inc., Houston, Texas, and Heritage Bancshares, Inc., Wilmington, Delaware, and thereby indirectly acquire voting shares of Heritage Bank, Wharton, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. First National Bank of Nevada Holding Company, Scottsdale, Arizona; to acquire approximately 91.45 percent of the voting shares of Rocky Mountain Bank, Chandler, Arizona.

2. Mitsubishi Tokyo Financial Group, Inc., Tokyo, Japan; to become a bank holding company by acquiring at least 65 percent of the voting shares of Bank of Tokyo-Mitsubishi Trust Company, New York, New York; Mitsubishi Trust & Banking Corporation (U.S.A.), New York, New York; and UnionBanCal Corporation, San Francisco, California; and thereby acquire shares of Union Bank of California, N.A., San Francisco, California.

In connection with this application, Applicant also has applied to acquire subsidiaries engaged in nonbanking activities, including Bankers Commercial Corporation, Los Angeles, California, and thereby engage in leasing personal and real property pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of RegulationY; UNBC Leasing, Inc., Los Angeles, California, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; UnionBanCal Leasing Corporation, Los Angeles, California, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Stanco Properties, Inc., San Francisco, California, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; UnionBanCal Mortgage Corporation, Los Angeles, California, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; HighMark Capital Management, Inc., San Francisco, California, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; Tokyo-Mitsubishi Securities (USA), Inc., New York, New York, and thereby engage in brokerage and investment advisory services, see The Mitsubishi Bank, Limited, 82 Fed. Res. Bull. 436 (1996); and The Bank of Tokyo, Ltd., 76 Fed. Res. Bull. 654 (1990); and thereby engage in providing agency transactional services, pursuant to § 225.28(b)(7) of Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y; and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Tokyo-Mitsubishi Futures (USA), Inc., Chicago, Illinois, and thereby engage in acting as a futures commission merchant, pursuant to § 225.28(b)(7) of Regulation Y; BTM Capital Corporation, Boston, Massachusetts, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; data processing, pursuant to § 225.28(b)(14) of Regulation Y and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; BTMCC Service Corporation, Boston, Massachusetts, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; Oak Grove Traincars, Inc., Boston, Massachusetts, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; BFC Assets, Inc., Boston, Massachusetts, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; Engine Lease Finance Corporation, Shannon, Ireland, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; Aviation Lease Finance, L.L.C., Shannon, Ireland, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; BTM Leasing and Finance, Inc., New York, New York, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y; extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; and data processing, pursuant to § 225.28(b)(14) of Regulation Y; Diamond Lease (U.S.A.), Inc., Greenwich, Connecticut, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; New England Capital Corp., Avon, Connecticut, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spectrum Capital Ltd., Greenwich, Connecticut, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of

Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spc Nevada, Ltd., Carson City, Nevada, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spectrum Aviation Services, Inc., Reston, Virginia, and thereby engage in providing aircraft appraisal services related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; Spectrum Corona, Inc., Wilmington, Delaware, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spectrum Corona Cogen Ltd., Wilmington, Delaware, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spectrum (CSW) Inc., Wilmington, Delaware, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Spectrum (China SW) Ltd., Wilmington, Delaware, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Volo Inc., Reno, Nevada, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; Winglet L.P., Carson City, Nevada, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; BC Capital Partners L.P., Wilmington, Delaware, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; and Wingspan II, Inc., Carson City, Nevada, and thereby engage in leasing personal and real property, pursuant to § 225.28(b)(3) of Regulation Y, and extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–30210 Filed 11–27–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 4, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 24, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–30456 Filed 11–24–00; 3:12 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Nondiscrimination on the Basis of Sex in Education Programs or Activities; Receiving Federal Financial Assistance

AGENCY: Office of Civil Rights, GSA.

ACTION: Notice of GSA financial assistance subject to Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with Subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended (''Title IX''), this notice lists Federal financial assistance administered by the GSA that is covered by Title IX. Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each Federal agency that awards Federal financial assistance to publish in the **Federal Register** a notice of the Federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty-one (21) Federal agencies, including GSA, on August 30, 2000 (65 FR 52857). GSA's portion of the final common rule will be codified at 41 CFR part 101–4.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of Federal financial assistance from discrimination on the basis of sex in educational programs or activities. Specifically, the statute states that ''[no] person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well, including, for example, law enforcement agencies, departments of corrections, and for profit and nonprofit organizations.

List of Federal Financial Assistance Administered by the General Services Administration to Which Title IX Applies

Note: All recipients of Federal financial assistance from GSA are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any. Failure to list a type of Federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

1. Donation of surplus personal property to educational activities which are of special interest to the armed services (section 203(j)(2) of the Federal

Property and Administrative Services Act of 1949, 40 U.S.C. 484(j)(2)).

2. Donation of surplus personal property for use in any State for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(j) (3) and (4) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j) (3) and (4)), and the making available to State agencies for surplus property, or the transfer of title to such agencies, of surplus personal property approved for donation for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(n) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(n)).

3. Disposal of surplus real and related personal property for purposes of education or public health, including research (section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(1)).

4. Donation of property for public airport purposes (section 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g); section 23 of the Airport and Airway Development Act of 1970, Public Law 91–258).

5. Disposal of surplus real property, including improvements, for use as a historic monument (section 13(h) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(h)).

6. Disposal of surplus real and related personal property for public park or public recreational purposes (section 203(k)(2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k)(2).

7. Disposal of real property to States for wildlife conservation purposes (Act of May 19, 1948, 16 U.S.C. 667b–d).

8. Donation of personal property to public bodies (section 202(h) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 483(h)).

9. Grants of easements by the General Services Administration pursuant to the Act of October 23, 1962, (40 U.S.C. 319–319(c), and grants by the General Services Administration of revocable licenses or permits to use or occupy Federal real property, if the consideration to the Government for such easement, licenses, or permits is less than estimated fair market value.

10. Conveyance of real property or interests therein by the General Services Administration to States or political subdivisions for street widening purposes pursuant to the Act of July 7, 1960 (40 U.S.C. 345c), if the consideration to the Government is less than estimated fair market value.

11. Allotment of space by the General Services Administration in Federal buildings to Federal Credit Unions, without charge for rent or services (section 25 of the Federal Credit Union Act, 12 U.S.C. 1770).

12. Donation of surplus property to the American National Red Cross (section 203(l) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(l)).

13. Provision by the General Services Administration of free space and utilities for vending stands operated by blind persons (section 1 of the Randolph-Sheppard Act, 20 U.S.C. 107).

14. Donation of forfeited distilled spirits, wine, and malt beverages to eleemosynary institutions (26 U.S.C. 5688).

15. Donation of surplus Federal records (Federal Records Disposal Act of 1943, 44 U.S.C. 366–380).

16. Grants to State and local agencies and to nonprofit organizations and institutions for the collecting, describing, preserving and compiling, and publishing of documentary sources significant to the history of the United States (section 503 of the Federal Property and Administrative Services Act of 1949, as amended by Public Law 88–383).

17. Loan of machine tools and industrial manufacturing equipment in the national industrial reserve to nonprofit educational institutions or training schools (section 7 of the National Industrial Reserve Act of 1948, 50 U.S.C. 456).

18. District of Columbia grant-in-aid hospital program (60 Stat. 896, as amended).

19. Disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (section 414 of the Housing and Urban Development Act of 1969, Public Law 91–152).

20. Payments in lieu of taxes on certain real property transferred from the Reconstruction Finance Corporation (Title VII of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 521–524).

21. Conveyance of certain lands and property to the State of Hawaii without reimbursement (Pub. L. 88–233, 77 Stat. 472).

Dated: November 21, 2000.

James M. Taylor,

Acting Associate Administrator, Office of Civil Rights, General Services Administration.

[FR Doc. 00–30213 Filed 11–27–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The purpose of the meeting is to convene the Commission to receive testimony from invited speakers and organizations interested in the subject of federal policy regarding complementary and alternative medicine. The major focus of the meeting is on the access to and delivery of complementary and alternative (CAM) services: Use, effectiveness, and delivery systems. Comments received at the meeting may be used by the Commission to prepare the Report to the President as required by the Executive Order.

Comments should focus on the Access and Delivery of Complementary and Alternative Medicine Services: Use, Effectiveness, and Delivery Systems. Issues to be discussed include the following: Utilization of CAM Services; Access and Delivery of CAM Services; Issues in Integrating the Delivery of CAM Services; Patient Perspectives on the Use of CAM Services; Meeting Public Needs—Public and Private Sectors Delivery Systems; and Novel Systems of CAM Services Delivery. Discussion also may focus on the following questions:

(1) Do patients and health care providers have ready access to CAM practices and interventions?

(2) How can access to safe and effective CAM practices and interventions be improved?

Name of Committee: The White House Commission on Complementary and Alternative Medicine Policy.

Date: December 4–5, 2000.

Time: December 4—9:15 a.m.–6:00 p.m.; December 5—8:00 a.m.–4:00 p.m.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Contact Persons: Michele M. Chang, CMT, MPH, Executive Secretary, or

Stephen C. Groft, Pharm.D., Executive Director, 6701 Rockledge Drive, Room 1010, MSC 7707, Bethesda, MD 20817–7707, Phone: (301) 435–7592, Fax: (301) 480–1691, E-mail: WHCCAMP@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000, by Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Public Participation

Oral statements by the public will be provided on December 4, from about 1:30 p.m.–2:30 p.m. (Time approximate). Members of the public who wish to present oral comment may register by calling 1–800–953–3298 or by accessing https://safe2.sba.com/whccamp/index.cfm or the website of the Commission at *http://whccamp.hhs.gov* no later than November 27, 2000.

Oral comments will be limited to five minutes; three minutes of oral presentation and two minutes to respond to questions by Commission members. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or question (as described above) to be addressed. When mailing or faxing written comments provide, if possible, an electronic version on diskette.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

Dated: November 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30175 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Evan B. Dreyer, M.D., Ph.D., Massachusetts Eye and Ear Infirmary (MEEI) and Harvard Medical School (HMS): Based on the findings and evidence documented in a report by a joint inquiry panel, dated November 17, 1997, and additional information obtained by the Office of Research Integrity (ORI) during its oversight review, on April 14, 2000, PHS issued its findings that Dr. Dreyer, former HMS Associate Professor of Ophthalmology at MEEI, engaged in scientific misconduct by falsifying or fabricating experimental results. These results were included in National Institute on Deafness and Other Communication Disorders (NIDCD), National Institutes of Health (NIH), grant application K08 DC00131–01A1.

Specifically, Dr. Dreyer falsified or fabricated experimental results to support the hypothesis that elevated levels of the amino acid glutamate play a role in Meniere's disease and reported these falsified or fabricated results in six documents:

1. An NIH grant application, K08 DC0013 l–0lA1, ''Glutamate toxicity in endolymphatic hydrops,'' submitted to NIH for a Mentored Clinical Scientist Development Award in July 1996. PHS found that the experimental results for 19 amino acids reported in Table 2 and the text (pp. 58–59) were falsified or fabricated.

2. An abstract, Cliff A. Megerian, M.D., Michael J. McKenna, M.D., Joseph B. Nadol, Jr., M.D., and Evan B. Dreyer, M.D., Ph.D. ''Elevated Perilymphatic Glutamate and Type-1 Spiral Ganglion Cell Loss in the Hydropic Ear,'' submitted on August 1, 1996, for the Triological Society Eastern Division Meeting scheduled for early February 1997. PHS found that the text reports the same falsified or fabricated experimental results for the amino acid glutamate that were reported in the K08 DC00131–OlA1 grant application to support the conclusion that elevated levels of glutamate may play a role in Meniere's disease.

3. A manuscript, Cliff A. Megerian, M.D., Michael J. McKenna, M.D., Joseph B. Nadol, Jr., M.D., Barbara J. Burgess, B.A., David Zurakowski, Ph.D., and Evan B. Dreyer, M..D., Ph.D. ''Elevated Perilymphatic Glutamate and Type-1 Spiral Ganglion Cell Loss in the Hydropic Ear.'' PHS found that Table 1 and the text (pp. 2 and 8) contained the same falsified or fabricated experimental results that were reported in the K08 DC00131–OlA1 grant application.

4. A draft NIH grant application, listing Dr. Dreyer as Principal Investigator, in which Table 2 and the text of the draft NIH grant application contained the same experimental results that the PHS found were falsified or fabricated in K08 DC00131-OlA1.

5. Two computer spreadsheets, which contained the same results that the PHS found were falsified or fabricated in the K08 DC00131-OlA1.

6. Magneto-optical computer disk, which contained files with 21 fabricated chromatograms of amino acid elution patterns. On January 21, 1997, Dr. Dreyer provided the computer disk to MEEI officials in response to requests for the primary data and laboratory notebooks supporting the amino acid results reported in the documents described above. On April 7 and May 21, 1997, Dr. Dreyer admitted that he fabricated each of the 21 chromatograms.

On May 10, 2000, Dr. Dreyer appealed the proposed PHS findings and administrative actions to the HHS Departmental Appeals Board (''DAB''), DAB Docket No. A–2000–72. However, on November 13, 2000, Dr. Dreyer entered into a Voluntary Exclusion Agreement (Agreement) with PHS in which he agreed to withdraw his appeal of the PHS findings of scientific misconduct against him.

Under the terms of the Agreement, with respect to the items in Paragraphs 1–5, Dr. Dreyer did not admit that he falsified or fabricated the results at issue, but he recognized that if the DAB case proceeded to conclusion, there was sufficient evidence upon which the DAB may make a finding of scientific

misconduct. With respect to the material identified in Paragraph 6, Dr. Dreyer admitted that he fabricated the 21 chromatograms contained in the magneto-optical computer disk that he provided to institutional officials after questions were raised about his research. Dr. Dreyer further admitted that the fabrication of the data on the disk amounts to scientific misconduct.

Dr. Dreyer has voluntarily agreed for a period of ten (10) years, beginning on November 15, 2000, to exclude himself from:

(1) Any contracting or subcontracting with any agency of the United States Government and from eligibility for, of involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations);

(2) Serving as a mentor to any graduate student, fellow, or other individual who applies for or receives Federal funding; and

(3) Serving in any capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion, however, does not apply to Dr. Dreyer's practice of clinical medicine as a licensed practitioner or to Federal funds used for purposes of teaching or training medical students, residents, or fellows, in clinical medical matters.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal,

Director, Office of Research Integrity.

[FR Doc. 00–30236 Filed 11–27–00; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organizations, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 68144, dated November 14, 2000) is amended to revise the functional statement of the Division for AIDS, STD, and TB Laboratory Research (DASTLR), National Center of Infections (NCID).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the Division of AIDS, STD and TB Laboratory Research (HCRN) and insert the following:

Division of AIDS, STD and TB Laboratory Research (HCRN). (1) Develops and evaluates laboratory methods and procedures for the diagnosis and characterization of infections caused by human immunodeficiency virus (HIV) and other retroviruses, other sexually transmitted diseases (STDs), and mycobacteria including *Mycobacterium tuberculosis;* (2) provides laboratory support for the surveillance, epidemiologic, and clinical activities of the National Center for HIV, STD, and TB Prevention (NCHSTP); (3) conducts applied research on the pathogenesis of and the immune mechanisms that occur in microbial infections; (4) conducts laboratory studies of hemophilia and other coagulating disorders; (5) provides reference laboratory services and assists in standardizing and providing laboratory reagents; (6) serves as a World Health Organization Collaborating Center; (7) conducts epidemiologic studies of HIV-infected and uninfected persons with hemophilia and their families; (8) assists in designing, implementing, and evaluating prevention and counseling programs for HIV-infected persons with hemophilia and their families; and (9) coordinates research on opportunistic infections occurring in HIV-infected persons.

Dated: November 15, 2000.

Jeffrey P. Koplan,

Director.

[FR Doc. 00–30217 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1599]

Agency Information Collection Activities; Proposed Collection; Comment Request; Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements to insure public health and safety for manufacturers of impact-resistant lenses used in eyeglasses and sunglasses.

DATES: Submit written or electronic comments on the collection of information by January 29, 2001.

ADDRESSES: Submit written or electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary

for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses (OMB Control Number 0910–0182)—Extension

Under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(i)), every manufacturer or importer of a device intended for human use shall establish and maintain records. This regulation is designed to protect the eyeglass and sunglass wearer from potential eye injury resulting from shattering of ordinary eyeglass lenses, and it requires that eyeglasses and sunglasses be fitted with impact-resistant lenses. Section 801.410(f) (21 CFR 801.410(f)) requires that the results of impact tests and description of the test method and apparatus also be kept for a period of 3 years. These records are valuable to FDA when investigating eye injury complaints.

The expected respondents to this collection are manufacturers of impact-resistant lenses. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.410(f)	30	769,000	23,070,00	.0008	18,456

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The Vision Council of America (www.visionsite.org) provided sales figures that were used in estimating the burden for this collection. Beginning in 1998, a growth rate of 2.6 percent for the distribution of lenses began, and it was assumed that this growth rate continued in 1999 and 2000. This resulted in an increase in the number of eyeglasses shipped annually to 89 million lenses shipped by year 2000.

By also assuming that the glass/plastic lenses-produced ratio remained as in previous years (22 percent glass and 78 percent plastic), that glass lenses must be tested individually, and only 5 percent of the plastic lenses must be tested, then 23,070,000 lenses should be tested. This figure was derived by taking 22 percent of 89 million glass lenses (19,600,000) and adding it to 5 percent of the remaining plastic lenses (5 percent x 69,400,000 = 3,470,000).

Next, divide the total tests (23,070,000) by 30 manufacturers to return the annual frequency of recordkeeping figure of 769,000. Previously, FDA and industry experts estimated that on average, each test could be completed and recorded in 3 seconds. Industry, therefore, could complete 1,200 tests per hour. Therefore, it is estimated that the total burden for this collection is 19,225 hours, which is calculated by taking the total records figure (23,070,000) and dividing it by tests per hour (1,200). The total hours was calculated by multiplying the total number of records (23,070,000) and the hours per record (.0008).

There is no burden estimated for maintaining sale or distribution records under § 801.410(e) since firms are retaining their records as a normal and customary business practice for reasons of product liability.

Dated: November 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30329 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0220]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Substances Approved for Use in the Preparation of Meat and Poultry Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Petition for Approval of Substances for Use in the Preparation of Meat and Poultry Products—21 CFR 71.1 and 171.1

Sections 409 and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348 and 379e) require FDA to evaluate the safety and regulate the use of food and color additives used as ingredients in or on all foods. These sections also authorize FDA to accept petitions for approval of food and color additives. The Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 601(m)(2) and 453(g)(2), respectively) authorize the administration of the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture to determine the suitability of the use of a substance in meat and poultry products. Regulations of the two agencies regarding petition submissions at times include conditions, formats, and terms that are not fully consistent with one another because of the different statutory mandates. Under the current process, FDA and FSIS conduct separate, sequential reviews of petitions, each agency applying its respective

procedures to ascertain that a substance is lawful for the use intended in or on products containing meat or poultry.

When petitioning for approval for the use of substances in meat and poultry products, the applicants must provide four copies of the petition to FDA, rather than the three copies as currently specified in §§ 71.1 and 171.1 (21 CFR 71.1 and 171.1). FDA will then forward a copy of the petition or relevant portions of the petition to FSIS so that both agencies can perform the necessary reviews simultaneously, thus reducing the time it takes to authorize an ingredient for use in meat and poultry products. The petitioners are not required to submit any new information to either FDA or FSIS.

This regulation results from a coordinated effort by the two agencies to ease the paperwork burden on regulated industries through streamlining the Federal Government's food ingredient approval process for substances used in meat and poultry products.

Description of Respondents: Businesses or other for profit.

In the **Federal Register** of August 25, 2000 (65 FR 51758), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL INCREASE IN REPORTING HOUR BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Increase in Hours per Response	Total Increase in Hours
71.1 and 171.1	10	1	10	2	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's past experience with food and color additive petitions and on discussions with FSIS about its past experience, it will receive 10 petitions annually that request approval for use of a substance in meat and poultry products. Submission of a petition for the use of a substance in meat and poultry products is a one-time event. FDA estimates that the respondent would expend 2 hours to make a fourth photocopy of the petition, necessary for FDA to send to FSIS to conduct a simultaneous review. FDA, therefore, estimates that the total burden of data collection under §§ 71.1 and 171.1 will increase by 20 hours per year because of the requirement to submit a fourth copy of petitions when a substance is to be used in meat or poultry products.

Dated: November 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30330 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 82F–0349, 90F–0188, 91F–0169, 93F–0157, 93F–0199, 95F–0011, 96F–0032, 96F–0223, 98F–0226, 98F–0288, 98F–0289, 99F–0052, 99F–0460, 99F–1074, 99F–2244, 99F–2245, 99F–5012, and 00F–0089]

Withdrawal of Food Additive Petitions Subsequently Converted to Food Contact Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of 18 food additive petitions proposing that the food additive regulations be amended to provide for the safe use of certain new food additives. The petitioners subsequently requested that their petitions be converted to food-contact notifications for review under the agency's new premarket notification (PMN) program for food-contact substances. The requested uses are now the subjects of effective notifications.

FOR FURTHER INFORMATION CONTACT: Sylvia D. Dodson, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3087.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** on the dates indicated in the table below, FDA announced the filing of 18 food additive petitions. These petitions proposed to amend the food additive regulations in the sections listed in the table to provide for the safe use of the listed substances intended for use in food-contact articles. Since publication of these filing notices, the petitioners have requested that their respective petitions be converted to food-contact notifications for review under the agency's new PMN process for food-contact substances and that their petitions be withdrawn when the corresponding notifications become effective. These petitions were converted to notifications and subsequently reviewed under the PMN process. The requested uses are now the subjects of effective notifications. The corresponding food additive petitions are now withdrawn without prejudice to a future filing (21 CFR 171.7).

TABLE 1.

FAP No.[1] and Docket No.	FNC No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
3B4354, 93F–0199	28	59 FR 59410, Nov. 17, 1994	Asahi Chemical Industry Co., Ltd., c/o Regulatory Assistance Corp.	175.105 and 177.1810	Maleic anhydride modified hydrogenated styrene butadiene block polymer.	Not Specified.
7A4539, 98F–0226	31	63 FR 18921, Apr. 16, 1998	Nalco Chemical Co.	173.310	Disodium or dipotassium fluorescein.	In boilers where steam may contact food.

TABLE 1.—Continued

FAP No.[1] and Docket No.	FNC No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
8B4569, 98F–0289	34	63 FR 25864, May 11, 1998	UBE Industries, Ltd., c/o Center for Regulatory Services.	177.1500	Nylon 6/12 copolymer resins manufactured using at least 80 weight percent epsilon-caprolactam and no more than 20 weight percent omega-aminododecanoic acid.	In contact with food.
0B4204, 90F–0188	44	55 FR 26264, June 27, 1990	Toyobo Co., Ltd.	177.1630	Hexanedioic acid polymer with 1,3-benzenedimethanamine.	Modifier for polyethylene phthalate (PET) polymers.
9A4659, 99F–1074	45	64 FR 23337, Apr. 30, 1999	Life Technologies, Inc.	173.25	Quaternary amine cellulose ion exchange resins.	Isolation and purification of protein concentrates and isolates from aqueous process streams for food processing.
6B4488, 96F–0032	47	61 FR 5001, Feb. 2, 1996	Shinagawa Fuel Co., Ltd., c/o Keller and Heckman.	Proposed new section in part 178.	Silver-zinc zeolite.	Agent to control the growth of microorganisms in plastic resins used in food-contact applications.
0B4702, 00F–0089	51	65 FR 1908, Jan. 12, 2000	Ciba Specialty Chemicals Corp.	178.2010	Phosphorous acid, bis[2,4-bis(1,1-dimethyl)-6-methylphenyl]ethyl ester.	Stabilizer in olefin polymers intended to contact food.
0B4700, 99F–5012	53	64 FR 66480, Nov. 26, 1999	Ciba Specialty Chemicals Corp.	178.2010	Oxidized bis (hydrogenated tallow alkyl) amines.	Process stabilizer for certain olefin polymers intended for use in contact with food.
6B4506, 96F–0223	54	61 FR 35770, July 8, 1996	Henkel Corp.	Proposed new section in part 176.	α-Sulfo--(dodecyloxy)poly(oxyethylene), sodium salt.	An emulsifier in the production of acrylic and vinyl acetate polymers coatings for paper and paperboard.
9A4677, 99F–2244	55	64 FR 37984, July 14, 1999	Bayer Corp., c/o ENVIRON International Corp.	173.25	Terpolymer of styrene, divinyl benzene, and ethylvinyl benzene, aminomethylated, then quarternized with methyl chloride.	As an ion exchange resin for use in treating aqueous solutions of sugar and hydrolyzed starch.
5B4448, 95F–0011	63	60 FR 7060, Feb. 6, 1995	Kuraray International Co.	177.1810	Styrene block copolymer with 2-methyl-1,3-butadiene and 1,3-butadiene, hydrogenated.	As a component of articles that contact food.
3B3677, 82F–0349	64	47 FR 56556, Dec. 17, 1982	Calgon Corp.	176.170	Diallyldimethylammonium chloride and acrylamide.	As a retention and/or drainage aid employed in the manufacture of paper and paperboard intended to contact food.
9B4646, 99F–0460	67	64 FR 13430, Mar. 18, 1999	Akzo Nobel Chemicals, Inc., c/o Keller and Heckman.	177.1520 and 177.2600	3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxynonane.	As a modifier in the production of olefin polymers used as components of food-contact articles.
8B4590, 98F–0288	68	63 FR 25213, May 7, 1998	Mitsui Chemicals, Inc., c/o Keller and Heckman	177.1520	Propylene/butene-1 copolymers containing greater than 15 but no more than 35 weight percent of polymer units derived from butene-1.	In contact with food.

TABLE 1.—Continued

FAP No.[1] and Docket No.	FNC No.[2]	FR Citation and Date	Company	Section/Part	Additive	Use
1B4256, 91F–0169	69	56 FR 32435, July 16, 1991	W. R. Grace, Ltd.	175.300	Styrene-butadiene-methacrylic acid terpolymer, 1,2-benzisothiazolin-3-one, and sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt.	Components in can end cements in contact with food.
3B4373, 93F–0157	70	58 FR 29231, May 19, 1993	Shell Oil Co.	Proposed new section.	Two carbon monoxide-olefin polymers, carbon monoxide-ethylene, and carbon monoxide-ethylene-propylene.	As articles or components of articles intended for use in contact with food.
9A4640, 99F–0052	74	64 FR 3703, Jan. 25, 1999	Bayer Corp., c/o ENVIRON Corp.	173.25	Completely hydrolyzed tetrapolymer of divinyl benzene, ethyl vinyl benzene, acrylonitrile, and 1, 7-octadiene.	In treating aqueous sugar solutions and beverage water.
9B4672, 99F–2245	83	64 FR 37984, July 14, 1999	BP Amoco Chemicals, Inc.	Proposed new section in part 177.	Poly(oxy[1,1′-biphenyl]-4,4′-diyloxy-1,4-phenylenesulfonyl-1,4-phenylene) prepared by reaction of biphenol and 4,4′-dichlorodiphenylsulfone.	As articles or components of articles intended for contact with food.

[1] Food additive petition number.
[2] Food contact notification number.

October 25, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–30326 Filed 11–27–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1620]

2001 National Antimicrobial Resistance Monitoring System (NARMS) Scientific Meeting; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting entitled ''2001 NARMS Scientific Meeting.'' The topic to be discussed is the results from NARMS and related antimicrobial resistance research.

DATES: The public meeting and poster session will be held on March 15 and 16, 2001, from 8:30 a.m. to 5 p.m. An early evening poster session and social hour will be held on March 15, 2001, from 5:30 p.m. to 7:30 p.m. Submit written comments by January 29, 2001.

ADDRESSES: The public meeting will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD. 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: Kathy S. Hemming, Center for Veterinary Medicine (HFV–250), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0184, 301–827–7625.

For information about the poster session contact: Charlotte A. Spires, Center for Veterinary Medicine (HFV–250), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6853, e-mail: cspires@cvm.fda.gov.

Registration: Registration is required. There is no registration fee for the meeting. Limited space is available, and early registration is encouraged. Logistics for the meeting and the registration form are available on the Internet at http://www.fda.gov/cvm/fda/mappgs/registration.html. Please send the registration form to Kathy Hemming (address above). Additional information about the meeting and the agenda will be available on the Internet (Internet site above) before the meeting. If you need special accommodations due to a disability, please contact the DoubleTree Hotel at least 7 days in advance, 800–222–8733.

Poster abstracts: Abstract preparation and submission information are available on the Internet at http://www.fda.gov/cvm/fda/mappgs/registration.html. Instructions and submission forms may be downloaded in MSWord or WordPerfect. Please send submission of poster abstract to Charlotte Spires (address above) by January 15, 2001.

SUPPLEMENTARY INFORMATION:

I. Background

The National Antimicrobial Resistance Monitoring System (NARMS) was established in 1996 as a collaborative effort among FDA, U.S. Department of Agriculture (USDA), and the Centers for Disease Control and Prevention (CDC). The NARMS was established in response to recommendations of several groups, including a 1995 task force of the American Society of Microbiology, to establish a national system in the United States to monitor levels of antimicrobial resistance in both animals and humans. The NARMS program prospectively monitors changes in susceptibilities of human and animal enteric bacteria to 17 antimicrobial drugs. Bacterial isolates are collected from human and animal clinical specimens, from healthy farm animals, and raw product from food animals. The objectives of the system include: (1) To provide descriptive data on the extent and temporal trends of antimicrobial susceptibility in *Salmonella* and other enteric organisms from human and animal populations, (2) to facilitate the identification of resistance in humans and animals as it arises, and (3) to provide timely information to veterinarians and physicians. The ultimate goal of these activities is to prolong the lifespan of approved drugs by promoting prudent and judicious use

of antimicrobical drugs and to identify areas for more detailed investigation.

The NARMS program is designed as two nearly identical parts: an animal arm and a human arm. Animal-origin enteric isolate susceptibility testing is conducted at the USDA, Agricultural Research Service's (ARS) Russell Research Center in Athens, Georgia. Sources of nationwide animal-origin isolates are: (1) Raw product collected from federally inspected slaughter and processing plants, (2) clinical specimens from the National Veterinary Sevices Laboratory and Veterinary Diagnostic Laboratory Sentinel Sites, (3) healthy farm-animal isolates from USDA National Animal Health Monitoring System (NAHMS) studies, and (4) on-farm studies conducted by ARS. Human-origin isolates are submitted by 17 State and local Departments of Health for testing that is conducted at the National Center for Infectious Disease, CDC, in Atlanta, Georgia. The participating human sites currently include: California (CA); Colorado; Connecticut; Florida; Georgia; Kansas; Los Angeles, CA; Maryland; Minnesota; Massachusetts; New Jersey; New York City; New York State; Oregon; Tennessee; Washington; and West Virginia. Animal and human isolates currently monitored in NARMS are non-typhoid *Salmonella*, *Campylobacter*, *Escherichia coli*, and *Enterococci*. Human isolates also include *Salmonella typhi* and *Shigella*. *Listeria* and *Vibrio* will be added to the list of human isolates in 2001.

The CDC/NCID and USDA/ARS provide the NARMS results annually in comprehensive summary reports. These reports are available on the CDC and FDA/CVM web sites. Additionally periodic public meetings are held to present NARMS results and provide a forum for presentation of other related antimicrobial resistance research.

II. Submission of Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this meeting by January 29, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy, or by fax to 301–827–6870. Comments are to be identified with the docket number found in the 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.

Dated: November 17, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30155 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Risk Analysis Clearinghouse; Data Quality Objectives; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting cosponsored by the interagency Risk Assessment Consortium (RAC) and the Joint Institute for Food Safety and Applied Nutrition (JIFSAN). The purpose of this public meeting is to encourage discussion and gain input from the public and professionals on data quality issues as they relate to the Food Safety Risk Analysis Clearinghouse (Clearinghouse).

Date and Time: The public meeting will be held on December 5, 2000, 6:30 p.m. to 8:30 p.m.

Location: The public meeting will be held at the Marriott Crystal Gateway Hotel, Grand Ballroom Salons F and G, 1700 Jefferson Davis Hwy., Arlington, VA 22202.

Contact: Wesley R. Long, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4024, FAX 301–935–0149, or email: wlong@cfsan.fda.gov.

Registration: None required.

SUPPLEMENTARY INFORMATION: Risk assessment generally characterizes the nature and magnitude of the risks associated with hazards to human health. A risk assessment provides an opportunity to organize scientific information and helps to clarify the necessary assumptions and degree of scientific certainty of the data used in the risk assessment. Risk assessments require specific information on the hazard and on the exposed populations to provide meaningful information to public health officials; a risk assessment may be considered in the development of risk-management decisions. Although data quality objectives have been developed for assessments of chemical risk, quality objectives for data addressing foodborne microbial pathogens are far less developed.

RAC, which includes members from Federal agencies that have responsibilities for food safety risk analysis, was established under the President's Food Safety Initiative to advance the science of food safety risk assessment and to assist agencies in fulfilling their specific food safety regulatory mandates. The RAC also advises the Clearinghouse, an Internet based resource of food safety risk data and risk assessments.

The Clearinghouse has been developed by JIFSAN, which is a major component of the FDA food safety program's integration with academic institutions to create intellectual partnerships. JIFSAN includes research and outreach components from the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, the University of Maryland (UMD), the Virginia-Maryland Regional College of Veterinary Medicine at UMD, and others. JIFSAN provides a neutral environment in which experts from industry, consumer and trade groups, international organizations, government, and academia can pool their resources and ideas to provide the scientific base for the development of sound public health policy.

Consistent with the goals of RAC and JIFSAN, an open public meeting will be held on data quality issues. The RAC and JIFSAN are seeking input to further the ability of the Clearinghouse to serve as a reliable data resource for use by researchers, industry, and international, Federal and State agencies. The main topic at this meeting will be data quality for microbiological and antimicrobial risk analyses. The draft agenda includes brief presentations on the RAC and the Clearinghouse followed by speakers from the Society of Risk Analysis (SRA) and international organizations. Public comment and discussion will follow the presentations.

This public meeting is being held in conjunction with the annual SRA meeting to leverage access by the RAC to an audience of risk analysis professionals. The meeting is also open to the public, and opportunity for public comment will be provided.

More information about the meeting site is available on the Internet at http://www.sra.org. The meeting agenda and summary will be posted at http://www.foodriskclearinghouse.umd.edu. The agenda posted on this Internet site will identify the specific time set aside for public comment.

Dated: November 22, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–30449 Filed 11–24–00; 2:36 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–250]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) Resident Assessment MDS Data and Supporting Regulations in 42 CFR 413.343 and 424.32; *Form No.:* HCFA–R–250 (OMB# 0938–0739); *Use:* Skilled Nursing Facilities (SNFs) are required to submit Resident Assessment Data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. The current requirements related to the submission and retention of resident assessment data for specified days following admission, necessary to administer the payment rate methodology described in 413.337, are subject to the Paperwork Reduction Act; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, and Not-for-profit; *Number of Respondents:* 17,000; *Total Annual Responses:* 204,000; *Total Annual Hours:* 5,551,298.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 13, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–30182 Filed 11–27–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 2000.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: December 7, 2000, 8 a.m.–5 p.m.; December 8, 2000; 8 a.m.–2 p.m.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, D.C. 20005.

The meeting is open to the public.

Purpose: The Advisory Committee shall (1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning activities under section 747 of the Public Health Service Act; and (2) prepare and submit to the Secretary, the Committee on Health, Education, Labor, and Pensions (formerly the Committee on Labor and Human Resources) of the Senate, and the Committee on Commerce of the House of Representatives a report describing the activities of the Advisory Committee, including findings and recommendations made by the Committee concerning the activities under section 747 of the PHS Act. The Advisory Committee will meet twice each year and submit its first report to the Secretary and the Congress by November 2001.

Agenda: Discussion of the focus of the programs and activities authorized under section 747 of the Public Health Service Act. Review the work completed to date by the two workgroups. Address funding issues and recommendations for the future. Finalization of an outline and specific content areas to be included in the Committee's first report.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Dr. Stan Bastacky, Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, phone (301) 443–6326, e-mail *sbastacky@hrsa.gov.* The web address for the Advisory Committee is *http://158.72.83.3/bhpr/dm/new__advisory __committee__on __primar.htm.*

Dated: November 21, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–30237 Filed 11–27–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to Pub. Law 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The entire meeting will be open to the public as indicated below,with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 7, 2000.

Time: 8:30 a.m.–4:00 p.m.

Agenda: The topics proposed for discussion include but are not limited to: (1) sharing biomedical research resources; (2) a status of guidelines on research using stem cells; (3) implementation of recommendation of ACD on the Office of Medical Applications of Research; and (4) a report of the Working Group on Extramural Construction.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 10, Bethesda, Maryland 20892.

Contact: Ms. Janice C. Ramsden, Special Assistant to the Principal Deputy Director, NIH, National Institutes of Health, Building 1, Room 333, Bethesda, Maryland 20892, *jr52h@nih.gov,* Telephone: (301) 496–0959.

Dated: November 16, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30164 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable acommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 29–30, 2001.

Closed: January 29, 2001, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: January 30, 2001, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 29–30, 2001.

Closed: January 29, 2001, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: January 30, 2001, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 29–30, 2001.

Closed: January 29, 2001, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: January 30, 2001, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 29–30, 2001.

Open: January 29, 2001, 1 pm to 3:30 pm.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: January 30, 2001, 3:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30160 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9), Title 5 U.S.C., as amended. The discussions could disclose personal information concerning NCI Staff and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and the premature disclosure of discussions related to personnel and programmatic issues which would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: National Cancer Advisory Board.

Dates: December 4–6, 2000.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: December 4, 7:00 p.m. to 8:30 p.m.

Agenda: To discuss activities related to the NCI Planning and Budget process for FY 2001–2002.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814, (301) 657–1234.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, National Institutes of Health, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: December 5, 8:45 a.m. to 11:45 a.m.

Agenda: Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/ Advisory Board and Groups, *http://deainfo.nci.nih.gov/ADVISORY/boards.htm*. Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: December 5, 11:50 a.m. to 12:20 p.m.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Contact Person: Dr. Ellen Feigal, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, (301) 496–2522.

Name of Committee: National Cancer Advisory Board, Ad Hoc Subcommittee on Communications.

Closed: December 5, 12:20 p.m. to 12:55 p.m.

Agenda: To discuss information of a proprietary and/or personal nature regarding the proposed structure of communication activities within the NCI.

Contact Person: Dr. Susan Sieber, Executive Secretary, National Cancer Institute, National Institutes of Health, (301) 496–5946.

Name of Committee: National Cancer Advisory Board.

Open: December 5, 1:00 p.m. to 4:10 p.m.

Agenda: Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups, *http://deainfo.nci.nih.gov/ADVISORY/boards.htm.* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Closed: December 5, 4:20 p.m. to Recess.

Agenda: To review and evaluate intramural research projects and discuss information of a personal and confidential nature.

Open: December 6, 8:45 a.m. to Adjournment (About 12:00 p.m.).

Agenda: Program reports and presentations; Business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups, *http://deainfo.nci.nih.gov/ADVISORY/boards.htm.* Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: November 16, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30163 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cooperative Planning Grant for Comprehensive Minority Institution/Cancer Center Partnership.

Date: December 3, 2000.

Time: 7:00 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Rashmi Gopal-Srivastava, PHD, Scientific Review Administrator, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard/EPN-Room 8078, Rockville, MD 20892–7410, 301/594–1182.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel, Planning Minority Institution/Cancer Center Collaboration.

Date: December 4, 2000.

Time: 8:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Rashmi Gopal-Srivastava, PHD, Scientific Review Administrator, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard/EPN-Room 8078, Rockville, MD 20892–7410, 301/594–1182.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Emphasis Panel, Comprehensive Minority Institution/Cancer Center Partnership.

Date: December 4, 2000.

Time: 5:00 pm to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Rashmi Gopal-Srivastava, PHD, Scientific Review Administrator, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard/EPN-Room 8078, Rockville, MD 20892–7410, 301/594–1182.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30168 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 6–8, 2000.

Time: 7:30 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8115, Bethesda, MC 20892–8238.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30169 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: December 6–8, 2000.

Time: 7:30 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MC 20892 301/402–0996.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30172 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Recompetition of the Existing Contracts for the Management and Operation of the Frederick Cancer Research and Development Center.

Date: December 18, 2000.

Time: 10:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Harvey P. Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8137, Rockville, MD 20892, (301/496–7481).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30173 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: November 16, 2000.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca A. Fuldner, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Dr., MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0809, fuldnerr@ncrr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30170 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: December 8, 2000.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew Mariani, PhD, Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30166 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 20, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 16, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30158 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: December 11, 2000.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd. Bethesda, MD 20892–7003, 301–443–9787 etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30159 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK 1 GRB–3 J1(P).

Date: December 5–7, 2000.

Time: 7:00 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Boston Park Plaza Hotel, 64 Arlington Street, Boston, MA 02116.

Contact Person: Michele Barnard, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK 1 GRB–B J1 (P).

Date: December 11, 2000.

Time: 8:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30161 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 J1.

Date: December 3–5, 2000.

Time: 7:00 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Iowa City Hotel, 210 South Dubuque Street, Iowa City, IA 52240.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 641, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 J1.

Date: December 3–5, 2000.

Time: 7:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill, 1 Europa Drive, Chapel Hill, NC 27514

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 J1.

Date: January 4–5, 2001.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.949, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30162 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 1, 2000.

Time: 9:30 am to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Secientist Development Award, Scientist Development Award for Clinicians, and Research Sceintist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30165 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: November 30-December 1, 2000.

Time: November 30, 2000, 6:30 PM to Recess.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

Time: December 1, 2000, 8:30 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 31 Center Drive, Building 31, Room 4C32 (NIAMS Conference Room), Bethesda MD 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30167 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: December 12, 2000.

Time: 3:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: December 18, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30174 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, November 29, 2000, 1 p.m. to November 29, 2000, 3 p.m., NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 which was published in the **Federal Register** on October 19, 2000, FR 203:62741.

The telephone conference call meeting will be held on January 16, 2001, from 1 p.m. to 3 p.m. at the same location, instead of November 29, 2000, as previously advertised. The meeting is closed to the public.

Dated: November 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30176 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: November 29, 2000.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Room 1AS19, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–2886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30177 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 28, 2000.
Time: 9:30 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 29, 2000.
Time: 9:30 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 4, 2000.
Time: 11:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 4, 2000.
Time: 2:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 4, 2000.
Time: 12:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Julian L. Azorlosa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2000.
Time: 2 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2000.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspg@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 5, 2000.
Time: 12 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Emphasis Panel IFCN 7 (03).
Date: December 6, 2000.
Time: 10:30 am to 11:30 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 6, 2000.
Time: 11:10 am to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 6, 2000.
Time: 11:30 am to 12:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, Ba, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701

Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Miller Sostek, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 6, 2000.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, Ba, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.982, 93.893, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30156 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30157 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: November 20, 2000.

Time: 12:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Elliot Postow, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4160, MSC 7806, Bethesda, MD 20892, (301) 435–0911, postowe@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2000.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29–December 1, 2000.

Time: 6:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Hay-Adams Hotel, 16th and H Streets, NW, Washington, DC 20006.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 1, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm, 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 1, 2000.

Time: 10:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 1, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evalaute grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 1, 2000.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evalaute grant applications.

Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, th88q@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–30171 Filed 11–27–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Robert M. Taylor, Sugarland, TX, PRT–035977

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Andy Tomlinson, Prescott, AZ, PRT–034624

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Selmer D. Lutey, Prescott, AZ, PRT–035213

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles W. Sand Jr., Columbus, NE, PRT–036161

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: World Exotics, Naples, Florida, PRT–033397

The applicant requests a permit to export one pair of captive born tigers (*Panthera tigris*) to Pengiran Ratna Wijaya Brigadier General, Brunei Darussalam for the purpose of enhancement of the species through captive propagation.

Applicant: White Oak Conservation Center, Yulee, FL, PRT–033790

The applicant requests a permit to import 2 captive bred cheetahs (*Acinonyx jubatus*) from Wassenaar Wildlife Breeding Centre, the Netherlands, for the purpose of captive propagation.

Applicant: Richard L. Mahan, Bentonville, AR, PRT–036233

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

Applicant: John Gulius, Wilkes-Barre, PA, PRT–035978

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Eugene Bell, Shoemakersville, PA, PRT–036246

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

On September 19, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 182, Page 56588, that an application had been filed with the Fish and Wildlife Service by USGS Biological Resources Division, Anchorage, AK for a permit (PRT–766818) to amend their permit to collect liver biopsy samples for the purpose of scientific research.

Notice is hereby given that on 10/27/2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

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 within 30 days of the date of this publication.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

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, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 21, 2000.

Charlie Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 00–30285 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Stage I Assessment Plan for the Kalamazoo River Environment Site Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of comment period.

SUMMARY: Notice is given that the draft ''Stage I Assessment Plan [for the] Kalamazoo River Environment Site'' is available for public review and comment. The public comment period started with local newspaper notices and placement of the document at repositories at the Allegan Public Library, Charles Ransom Library, Kalamazoo Public Library, Otsego District Library, Saugatuck-Douglas Library, and Waldo Library on November 20, 2000.

The U.S. Department of the Interior (''Department''), the Michigan Department of Environmental Quality, the Michigan Attorney General, and the U.S. National Oceanic and Atmospheric Administration are acting as co-trustees for natural resources considered in this assessment plan, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The assessment plan describes the first stage of a natural resource damage assessment which the trustees are conducting pursuant to the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the assessment plan announced by this Notice is provided for in 43 CFR 11.32(c)(1).

Interested members of the public are invited to review and comment on the assessment plan. Copies of the assessment plan can be requested from the address listed below. The trustees may revise the assessment plan in response to issues raised during the comment period. All written comments will be considered.

The U.S. Fish and Wildlife Service and the Michigan Department of Environmental Quality will hold an informational meeting regarding the assessment plan at 7 p.m. on Monday, December 4, 2000, at the Plainwell Comfort Inn, 622 Allegan Street (M–89), Plainwell, MI (616–685–9891).

DATES: Written comments on the assessment plan described in this notice must be submitted on or before January 16, 2001.

ADDRESSES: The assessment plan is available at repositories at the Allegan Public Library, Charles Ransom Library, Kalamazoo Public Library, Otsego District Library, Saugatuck-Douglas Library, and Waldo Library, all in southwestern Michigan. The document can be also accessed online through the Internet at the following website: *http://midwest.fws.gov/nrda/kalamazoo*. Written requests for paper copies may be made to: Lisa L. Williams, Ph.D., U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify injuries to natural resources, resultant economic damages, and the natural resource restoration necessary to address those injuries in the Kalamazoo River environment resulting primarily from exposure to polychlorinated biphenyls released by Kalamazoo River and Portage Creek paper mills. The injury and required restoration are assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Clean Water Act, as amended, and, for the state trustees, Michigan's Natural Resources and Environmental Protection Act, as amended.

Dated: November 20, 2000.

William F. Hartwig,

Regional Director.

[FR Doc. 00–30247 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[HE–952–9911–00]

Extension of Approved Information Collection, OMB Number 1004–0179

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of an existing approval to collect certain information from those persons with an In-Kind Crude Helium Sales Contract. BLM also collects helium sales information from Federal agencies and helium suppliers on major helium requirements to balance crude helium sales with the sale of helium to Federal agencies (43 CFR 3195).

DATES: You must submit your comments to BLM at the appropriate address below on or before January 29, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include ''ATTN: 1004–0179'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Connie H. Neely, Crude Helium Sales Analyst, (806) 324–2635.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Helium Privatization Act of 1996 requires the Department of the Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, and other Federal agencies to purchase major helium requirements from authorized contractors. These contractors are then required to purchase an equivalent amount of crude helium from the Department of the Interior, Bureau of Land Management.

The respondents are Federal agencies and helium suppliers (contractors) who purchase major helium requirements and report to BLM the sales information for an accurate account of helium to Federal agencies from Federal helium suppliers.

BLM estimates an average of 76 respondents and 304 responses annually. The frequency of response is once for the In-Kind Crude Helium Sales Contract and quarterly for the required helium sales information under 43 CFR 3195. Based on the BLM's experience, it will take a respondent approximately one hour to supply the requested information in the In-Kind Crude Helium Sales Contract. It will take a respondent from 15 minutes to 2 hours to supply the required helium sales information under 43 CFR 3195. The estimated total annual burden is 912 hours collectively.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: November 20, 2000.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 00–30189 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–035–5900–DH: GP1–0031]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Lookout Mountain Landscape Area Management Plan and Baker Resource Management Plan Amendment in Baker County, Oregon

AGENCY: Bureau of Land Management, USDI.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Lookout Mountain Landscape Area Management Plan and Baker Resource Management Plan (RMP) Amendment in Baker County, Oregon and Notice of Scoping.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management, Vale District, Baker Field Office, will be preparing an EIS on the impacts of proposed management activities in the Lookout Mountain geographic management area and a Resource Management Plan (RMP) Amendment (43 CFR 1610.5–5). Proposed projects include, range improvements, vegetation manipulation, forest health enhancement, watershed restoration and wildlife habitat enhancement. At a minimum, the proposed RMP Amendment would change the Visual Resource Management (VRM) allocations within the Lookout Mountain geographic area based on new inventories.

DATES: Written comments for the initial scoping will be accepted until January 8, 2001. A public meeting will be held in Baker County prior to finalizing the alternatives for the DEIS. The time, place and date of the public meeting will be published in Baker City Harold, Hells Canyon Journal, and the Argus Observer. Additional meetings will be considered as appropriate. Comment period length will be noted at each point in the planning and analysis process.

SUPPLEMENTARY INFORMATION: The project area consists of approximately 25,000 acres of public lands located between the Brownlee Reservoir of the Snake River and Durkee, Oregon. The area includes portions of the Morgan Creek, Hibbard Creek, Fox Creek, Conner Creek, Daley Creek and Sisley Creek drainages. Potential activities may include, but are not limited to, timber harvesting, tree thinning, prescribed burning, tree planting, juniper removal, fence construction, noxious weed treatment, rangeland seeding, riparian planting, placement of large woody debris in stream channels, new road construction, road improvements and road closures. Interdisciplinary team disciplines to be represented will include; forestry, recreation, range conservation, hydrology, wildlife, fisheries, botany, archeology, geology and engineering.

The Baker Field Office originally started public scoping for these projects with a letter that went out on May 21, 1999 and a field trip to the area in the fall of 1999. Based on this scoping and the initial assessment, the analysis has been elevated from an Environmental Assessment to an Environmental Impact Statement. Comments received during the initial scoping have been retained and will be carried forward through the planning process.

The Tentative Project Schedule Is as Follows:

File Draft EIS—Spring, 2001
File Final EIS—Fall, 2001
Record of Decision—Winter, 2002

Public participation will be especially important at several points during the analysis and planning process. The scoping process (40 CFR 1501.7) for this analysis will include;

1. Identification of the issues to be addressed,

2. Identification of viable alternatives,

3. Identifying and notifying interested groups, individual and agencies to determine level of participation and obtain additional information concerning issues to be addressed in the EIS.

Comments, including names and addresses of respondents, will be available for public review at the Baker Field Office during normal working hours (7:45 AM to 4:30 PM except holidays), and may be published as part of the EIS or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety. The planning documents and direct supporting record for the analysis and plan amendment will be available for inspection at the Baker Field Office during normal working hours. Historical records may also be posted on the BLM inter-net site to facilitate public access.

ADDRESSES: Comments should be sent to Penelope Dunn Woods, Field Manager,

Baker Resource Area, Vale District, Bureau of Land Management, 3165 10th St, Baker City, Oregon 97814. Comments may also be sent by e-mail to Baker__Mail@or.blm.gov.

FOR FURTHER INFORMATION CONTACT: Dick Watson, Bureau of Land Management, 3165 10th Street, Baker City, Oregon 97841, (541) 523–1339.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 00–30183 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; NMNM 0 48342]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 0 48342 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Margo C. Sena, BLM, New Mexico State Office, (505) 438–7457.

Dated: November 16, 2000.

Margo C. Sena,

Land Law Examiner.

[FR Doc. 00–30184 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW141441]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW141441 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW 141441 effective September 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 00–30185 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service.

ACTION: Notice of Availability of the Record of Decision for the Final Recreational Off-Road Vehicle Management Plan/Supplemental Environmental Impact Statement, Big Cypress National Preserve, Florida.

SUMMARY: The National Park Service has prepared this Record of Decision (ROD) on the Final Recreational Off-Road Vehicle Management Plan/ Supplemental Environmental Impact Statement, for Big Cypress National Preserve, Florida. This ROD includes a description of the need for the plan, a summary of the planning process, a statement of the decision made, the basis for the decision, a synopsis of other alternatives considered, a description of the environmentally preferable alternative, and a listing of the measures to minimize environmental harm.

DATES: This ROD became effective upon signature by the Director of the National Park Service on September 28, 2000.

ADDRESSES: Copies of the Record of Decision for the Big Cypress Final Recreational Off-Road Vehicle Management Plan/Supplemental Environmental Impact Statement are available from the Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida 34141, telephone 941–695–2000. The ROD is also on the Internet at *http://www.nps.gov/BICY.*

SUPPLEMENTARY INFORMATION: The intent of the selected action is to limit and control the use of off-road vehicles (ORV) use in a manner that will ensure the natural and ecological integrity of the preserve. The selected action will result in long-term benefits to vegetation, soils, surface water flows, and water quality. Further, the selected action may benefit the Cape Sable seaside sparrow and the Florida Panther.

The selected action will limit ORV use to approximately 400 miles of primary trails. Trails would be designated in the Bear Island, Turner River, Corn Dance and Stairsteps Units. The Deep Lake and Look Units will remain closed to ORV use.

Dated: November 16, 2000.

Jerry Belson,

Regional Director, Southeast Region.

[FR Doc. 00–30248 Filed 11–27–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–421]

Processed Foods and Beverages: A Description of Tariff and Non-tariff Barriers for Major Products and Their Impact on Trade

AGENCY: United States International Trade Commission.

ACTION: Institute of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 17, 2000.

FOR FURTHER INFORMATION CONTACT: For general information, Karl Rich (202–205–3317), Vince Honnold (202–205–3314), or Cathy Jabara (202–205–3309), Agriculture and Forest Products Division, Office of Industries, or for information on legal aspects, William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this

study by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Background: In response to a letter received on October 31, 2000, from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted an investigation for the purpose of preparing a report that will describe the trade barriers affecting major products in the processed food and beverage sectors in major and potential markets and analyze the impact of these barriers on trade. As requested, the Commission's report will include the following:

(1) A description of the tariff and non-tariff barriers affecting trade in the processed food and beverage sectors in major and potential markets, including complex tariffs, tariff-rate quotas, regional trade agreements, licensing arrangements, certification and registration requirements, and variable levies;

(2) An evaluation of the prevalence of tariff escalation for processed food and beverage products; and

(3) An analysis of the impact of tariff and non-tariff barriers on trade and investment in the processed food and beverage sectors.

The report will cover major products in the following processed food and beverage sectors identified by the Committee: dairy products; sugars and sugar-containing products; vegetable oils; meats; eggs and egg products; flours and other intermediate goods; grain-based foods; fruits and vegetables; edible nuts and nut products; alcoholic beverages; pet food; and other miscellaneous food and beverage products.

Preliminary Written Comments: In order to assist the Commission in identifying the barriers and/or issues affecting the above sectors, the Commission requests that interested parties provide preliminary written comments on such barriers and/or issues by February 16, 2001. All preliminary written comments should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Interested parties are also encouraged to provide further information at the public hearing and in prehearing and posthearing briefs/statements.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on May 22, 2001. All persons will have the right to appear, by counsel or in person, to present information and be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., May 8, 2001. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 10, 2001; the deadline for filing posthearing briefs or statements is 5:15 p.m., June 6, 2001. In the event that, as of the close of business, May 8, 2001, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1806) after May 8, 2001 to determine whether the hearing will be held.

Written Submissions: In lieu of, or in addition to, participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requested confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with section 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on June 6, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: November 20, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–30243 Filed 11–27–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—42 Volt Working Group

Notice is hereby given that, on October 4, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the 42 Volt Working Group has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; DaimlerChrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI. The nature and objectives of the venture are to research ways to address the challenges associated with the conversion of motor vehicles to 42 volt electrical systems. The higher voltage system is expected to mitigate the negative impacts of inceasing vehicle power demands by allowing significantly smaller wires and electronics devices. The research is expected to include investigation into areas such as voltage regulation, electrical arcing, corrosion, and other topics as they relate to the conversion to 42 volt systems. To accomplish this objective, the parties are working together and with various potential suppliers to fund studies on this technology and to investigate common interfaces and performance. The parties expect to share the information generated with other suppliers and vehicle manufacturers in the future and to explore standards with industry standard-setting groups.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–30186 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—The Asymmetrical Digital Subscriber Line Forum

Notice is hereby given that, on December 8, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Asymmetrical Digital Subscriber Line Forum (''ADSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anda Networks, Santa Clara, CA; Celotek, Research Triangle Park, NC; Digicom Systems, Milpitas, CA; Element 14, Cambridge, England, UNITED KINGDOM; iMagicTV, Saint John, New Brunswick, CANADA; Jato Communications, Denver, CO; Ramp Networks, Santa Clara, CA; Turnstone Systems, Mountain View, CA; Universal Microelectronics, Torrance, CA; Vitria Technology, Sunnyvale, CA; and Wind River Systems, Alameda, CA have been added as parties to this venture. Diamond Lane Communications, Petaluma, CA has merged with Nokia Telecommunications, Petaluma, CA. RELTEC, Bedford, TX was bought by Marconi Communications, Genova, ITALY. Routerware, Newport Beach, CA has merged with Wind Rivers Systems, Alameda, CA; and HP Cerjac, Palo Alto, CA has changed its name to Agilent Technologies, Westford, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 FR 338058).

The last notification was filed with the Department on October 13, 1999. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–30188 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on October 20, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are 2nd Wave, Inc., Dallas, TX; Candle Corporation, El Segundo, CA; Entuity, Inc., New York, NY; Hewlett Packard Open View, Fort Collins, CO; InteQ Corporation, Burlington, MA; iSharp, Redwood City, CA; Luminate, Redwood City, CA; Manage.com, San Jose, CA; ManageIT, Houston, TX; McAfee.com, Sunnyvale, CA; NCMX, Inc., Seattle, WA; Nuclio Corporation, Skokie, IL; SilverBack Technologies, Inc., Billerica, MA; Sitelite, Inc., Rancho Santa Margarita, CA; SiteRock Corporation, Emeryville, CA; Storability, Inc., Southborough, MA; StorageNetworks, Inc., Waltham, MA; TriActive, Inc., Austin, TX; UP 7/24, San Diego, CA; AdvenNet, Inc., San Jose, CA; Crystal Group, Inc., Hiawatha, IN; DefendNet Solutions, Inc., Providence, RI; Dirig Software, Nashua, NH; Easy Vista, Beverly, MA; Envive Corporation, Mountain View, CA; FusionStorm, San Francisco, CA; Internet Security Systems, Inc., Atlanta, GA; Logical, Slough SL1 4NL, England, UNITED KINGDOM; ManagedStorage International, Inc., Westminster, CO; Mercury Interactive Corp., Sunnyvale, CA; Selis Networks, Inc., San Francisco, CA; Symantec Corporation, Cupertino, CA; Atlaworks, Nashua, NH; Digital Fuel Technologies, Inc., Redwood City, CA; e4e, Inc., Santa Clara, CA; Gomez Networks, Lincoln, MA; InsynQ, Inc., Tacoma, WA; Connected Corporation, Natick, MA; EMC Corporation, Hopkinton, MA; Mission Critical Linux, Inc., Lowell, MA; TimeBridge Technologies, Inc., McLean, VA; NetTasking.com, Singapore 038987, SINGAPORE; StorageWay, Inc., Fremont, CA; CAT Technology, Los Gatos, CA; Freshwater Software, Inc., Boulder, CO; Access360, Irvine, CA; Nitrosoft Linux, Ottowa, Ontario, CANADA; Guardent, Inc., Waltham, MA; NetSolve, Austin, TX; Tally Systems, Corp, Lebanon, NH; eNetSecure, Inc., Sunnyvale, CA; Coradiant, Inc., Montreal, Quebec, CANADA; Telenisus Corp., Rolling Meadows. IL; Agilent Technologies—Firehunter, Fort Collins, CO; Precise Software Solutions Inc., Westwood, MA; BMC Software, Inc., Houston, TX; esavio, Berwyn, PA; Arsenal Digital Solutions, Durham, NC and Aptegrity, Fairfield, NJ.

The nature and objectives of the venture are (a) to educate the market, sponsor research, foster standards and articulate the measurable benefits of the management service provider model; (b) to serve as a forum for discussion of related issues, sponsor industry research, develop opens standards and guidelines and promote best practices; and (c) to undertake such other activities as may from time to time be appropriate to further the purposes and goals set forth above.

Notwithstanding the foregoing, if the Board of Directors elects to seek and obtains an exemption from Federal taxation for the Corporation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended, and until such time, if ever, as such exemption is denied or lost, the Corporation shall not be empowered to knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c) of the Code. Membership in the Corporation remains open and the Corporation intends to file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 00–30187 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a

bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 25, 2000, Cerilliant Corporation, 14050 Summit Drive, Suite 121, P.O. Box 80189, Austin, Texas 78708–0189, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Pholcodine (9314)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 28, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30294 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 1, 2000, and published in the **Federal Register** on September 25, 2000, (65 FR 57621), Glaxo Wellcome Inc., Attn: Jeffrey A. Weiss, 1011 North Avendell Avenue, P.O. Box 1217, Zebulon, North Carolina 27597–2309, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Glaxo Wellcome Inc. to import remifentanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Glaxo Wellcome Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 7, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30291 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 6, 2000, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture amphetamine for a customer and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 29, 2001.

Dated: November 14, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30295 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 25, 2000, and published in the **Federal Register** on May 2, 2000, (65 FR 30615), Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hyddrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Lipomed, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: November 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30290 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21 Code of Federal Regulations (CFR), notice is hereby given that on April 18, 2000, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register

Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30292 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 6, 2000, and published in the **Federal Register** on September 25, 2000 (65 FR 57623), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of alphamethadol (9605), a basic class of controlled substance listed in Schedule I.

The firm plans to import the alphamethadol to manufacture diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to import alphamethadol is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an exporter of the basic class of controlled substance listed above.

Dated: November 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30296 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 3, 2000, West-Ward Pharmaceutical Corporation, 465 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The firm plans to import destropropoxyphene for the manufacture of controlled and noncontrolled products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–43746, September 23, 1975, all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 6, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–30293 Filed 11–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 04–01

UIPL 04–01 reminds State Employment Security Agencies of the Department of Labor's interpretation of the ''payment when due'' requirement of Section 303(a)(1) of the Social Security Act as applied during a continued claim series. It also provides clarification concerning this interpretation.

Dated: November 20, 2000.

Raymond Bramucci,

Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEUL
Date: October 27, 2000

Directive: Unemployment Insurance Program Letter No. 04–01

To: All State Employment Security Agencies

From: Grace A. Kilbane, Administrator, Office of Workforce Security

Subject: Payment of Compensation and Timeliness of Determinations during a Continued Claims Series

1. *Purpose.* To remind States of the Department of Labor's (Department's) interpretation of the ''payment when due'' requirement of Section 303(a)(1) of the Social Security Act (SSA), as applied during a continued claim series, and to provide clarification concerning this interpretation.

2. *References.* Section 303(a)(1), SSA; *California Department of Human Resources Development v. Java,* 402 U.S. 121 (1971); *Fusari v. Steinberg,* 419 U.S. 379 (1975); *Pennington v. Didrickson,* 22 F.3d 1376 (7th Cir. 1994); 20 CFR Parts 602 and 640; Unemployment Insurance Program Letter (UIPL) No. 1145 (Procedures for Implementation of the *Java* Decision); UIPL No. 34–85 (Voluntary Waiver of Benefit Rights by a Claimant Pending the Outcome of an Employer Initiated Appeal); ETA Handbook No. 365 (Unemployment Insurance Quality Appraisal (no longer in effect)); ET Handbook No. 301 (UI Performs: Benefit Timeliness and Quality (BTQ): Nonmonetary Determinations Quality Review); ET Handbook No. 401 (Unemployment Insurance Reports).

3. *Background.* While conducting training for States on the new process for reviewing the quality of nonmonetary determinations, the Department became aware that, during a continued claim series, some States may not properly administer the requirements of Section 303(a)(1), SSA, concerning payment of unemployment compensation (UC) ''when due.'' The Department has three specific concerns.

First, some States may fail to pay benefits to claimants for weeks in which no eligibility issue exists when a determination of eligibility for a previous week is pending.

Second, the Department has observed an inconsistency among States in the starting date used to calculate timeliness of determinations during a continued claim series, a date that should be uniformly applied.

Third, the Department has found that, during a continued claim series, some States improperly withhold benefits from claimants when the State does not make a determination of continued eligibility in a timely fashion.

The Department is issuing this UIPL in order to address these concerns. It clarifies UIPL No. 1145, issued in 1971 but still in effect, with respect to the date to be used for calculating timeliness of determinations during a continued claim series, and clarifies when payment may not be withheld during a continued claim series.

4. *Section 303(a)(1), SSA—''Full Payment .... When Due.''* Section 303(a)(1), SSA, requires States, as a condition of receiving Federal UC administration grants, to provide in their laws for ''[s]uch methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.'' In the 1971 decision, *California Department of Human Resources Development v. Java,* the Supreme Court interpreted ''when due'' in Section 303(a)(1), SSA, to mean ''at the earliest stage of unemployment that such payments [are] administratively feasible after giving both the worker and the employer an opportunity to be heard.'' Although the specific holding in *Java* required the State to pay benefits to claimants initially determined eligible pending an employer appeal, the Court's reasoning was broader, requiring promptness at all stages of the eligibility determination and payment processes. See UIPL No. 1145, Attachment, page 1; *Fusari v. Steinberg,* 419 U.S. 379, 387–388 n.15 (1975); and *Pennington v. Didrickson,* 22 F.3d 1376, 1386 (7th Cir. 1994) (quoting *Jenkins v. Bowling,* 691 F.2d 1225 (7th Cir. 1982)). The Department has issued regulations interpreting the promptness requirement of Section 303(a)(1), SSA, to require payment of UC to eligible claimants, and the making of determinations, ''with the greatest promptness that is administratively feasible.'' 20 CFR 640.3(a). In addition, in the attachment to UIPL No. 1145, the Department interpreted the promptness requirement of Section 303(a)(1), SSA, to require prompt determinations on individual claims. See pages 8 & 14, UIPL No. 1145, Attachment.

As well as promptness, the Department has always interpreted ''when due'' in Section 303(a)(1), SSA, to require accuracy in order to ensure that payments are not made when they are not due. See 20 CFR 602.11(a) and 602.21(c). Proper application of Section 303(a)(1) requires an appropriate balancing of the dual concerns of promptness and accuracy in the ''when due'' provision.

5. *The Need for Payment Without Delay to Claimants in Weeks for which They Are Eligible During a Continued Claim Series.* As stated, a fundamental aspect of payment ''when due,'' for purposes of Section 303(a)(1), SSA, is that UC is due to claimants who are eligible under State law. Eligibility for UC is determined on a week-by-week basis. During a continued claim series, a claimant must certify as to continuing eligibility for each week. If information provided by the claimant or others establishes eligibility, the State agency manifests its determination of eligibility for that week by issuing compensation to the claimant. When a question concerning continued eligibility for benefits for a given week arises, the State agency conducts an investigation of the facts and makes a determination of eligibility or ineligibility. While such a determination is pending, the State agency need not issue payment for the week in question until it issues a determination regarding eligibility, provided the determination is timely. Sometimes the question of eligibility affects future weeks. In such circumstances, not issuing payment for these later weeks because of the earlier eligibility issue is acceptable until a *timely* determination is made.

When the question of eligibility does not affect later weeks, however, States must make payment for the later weeks without delay. In other words, States may not withhold payment for later weeks in which no eligibility issue exists consistent with Section 303(a)(1), SSA's requirement to pay benefits ''when due.'' The Department clearly expressed this requirement on page 19 of the Attachment to UIPL No. 1145, stating ''[w]hen the question [of eligibility] relates to eligibility or possible fraud for past weeks only, benefits claimed for current weeks *may not be suspended* while an investigation is conducted [emphasis added].'' This requirement is still in force.

6. *Timely Determinations in a Continued Claim Series.* The attachment to UIPL No. 1145 interpreted the ''when due'' provision in Section 303(a)(1), SSA, and *Java,* to require prompt resolution of eligibility issues that arise during a continued claim series. That Attachment stated that such determinations would be considered to be issued ''on time'' within the meaning of the ''when due'' requirement, as interpreted in *Java,* if issued ''no later than the end of the week following the week in which [an] issue arises [emphasis added].'' Thus, the date on which an issue ''arises'' is the critical date for calculating timeliness.

The term ''arises'' has historically been subject to different interpretations. Some States have interpreted the ''arises'' date literally to mean the date a claimant engaged in potentially disqualifying behavior. Other States have applied the interpretation found in ET Handbook No. 365, Quality Appraisal, in effect from 1992–1996, which says that determinations during a continued claim series are timely if ''issued within 7 days from the end of the week in which the issue is *detected*'' (in the case of intrastate claims) or the State *''received notification''* of the issue (in the case of interstate claims) (emphases added). This approach interpreted the ''issue arises'' date in UIPL No. 1145 to mean the issue detection date. This interpretation is followed in subsequent handbooks, including ET Handbook No. 401, the UI Reports Handbook, and Handbook 301, the BTQ NonMonetary Determination Quality Review Handbook (see pages V–9 and V–10). Handbook 401 defines the issue detection date as: ''the earliest date that the agency, including organizational units . . . , is in possession of information indicating the existence of a nonmonetary issue'' (see page V–3–5).

Although UIPL No. 1145, Attachment, used the term ''arises,'' taken in context, that term means, as reflected in later handbooks, the date an issue is detected by the State agency. Interpreting the ''issue arises'' date in the more literal manner followed by some States (meaning the date of the potentially disqualifying event) would necessarily preclude timely determinations in many cases. For example, if a claimant refused a

job in week one and has until Thursday or Friday of the following week to submit a claim certification for week one, it may be impossible for the agency to gather facts and issue a decision by Friday of week two. Requiring a determination to be made in that manner is not reasonable, nor is it necessary under Section 303(a)(1), SSA. Consequently, States are to use the issue detection date as the date from which to calculate timeliness for purposes of Federal requirements.

7. *Balancing Timeliness and Accuracy: the Presumption of Continued Eligibility.* Although Section 303(a)(1), SSA, requires timely determinations regarding eligibility for individual claimants, States may, in some cases, be unable to issue a determination in a timely fashion. UIPL No. 1145 stated that before a determination is made in a continued claim series ''benefits *will not be withheld*'' (emphasis added) (see UIPL No. 1145, Attachment, page 19). Over the years, the Department has been asked about the meaning of this statement, especially in relation to the requirement of Section 303(a)(1), SSA, that payment not be made when it is not due.

With this UIPL, the Department clarifies this statement in UIPL No. 1145, Attachment, concerning payment during a continued claim series. Prior to the date for timely determinations, a State is not required to pay UC without a determination. However, when the date for a timely determination has passed in a continued claim series, the State must either issue a determination of ineligibility for UC (where the facts establish ineligibility) or else pay UC immediately. Payment would occur under a presumption of continuing eligibility. The presumption means that the State has made an initial determination of eligibility and, based on that initial determination and the absence of facts clearly establishing current ineligibility, the State agency presumes the claimant's continued eligibility until it makes a determination otherwise. The presumption is appropriate in a continued claim series because a determination of initial eligibility exists on which the presumption can be based. The presumption may not be applied on an initial claim.[1]The presumption appropriately balances the timeliness and accuracy concerns of Section 303(a)(1), SSA.

The presumption of continued eligibility is an expedient for the State to facilitate timely payments and may not be used as a substitute for the State completing its determination procedures. In order to avoid failing to comply with Section 303(a)(1), SSA, by paying benefits when they are not due, a State using the presumption must issue a determination as soon as administratively feasible after payment is made to verify whether the presumption was correct. In arriving at such a determination the State must follow the predetermination procedures set forth in UIPL No. 1145.

The Department is aware that making payments based on a presumption of continuing eligibility may result in overpayments. For that reason, States must make timely determinations whenever possible. A certain number of overpayments resulting from application of the presumption of continuing eligibility, when the agency has been unable to issue a timely determination, are inevitable.

In order to notify individuals of their rights and obligations, a State must inform claimants who receive payments under such a presumption that a pending eligibility issue may affect their entitlement and may result in an overpayment. The State may also advise claimants that they may want to defer cashing the unemployment check until their eligibility has been verified. This may help to deter losses to the State's fund and enable the claimant to immediately repay any overpayment. This procedure is consistent with Departmental guidance in UIPL No. 34–85, concerning the prohibition on voluntary waiver of benefit rights by claimants, because a determination has not yet been made.

8. *Action Required.* Administrators are to provide this information to appropriate staff.

9. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

10. *Attachment.* UIPL No. 1145.

In reply refer to: MUOC

U.S. Department of Labor, Manpower Administration, Washington, D.C. 20210

November 12, 1971

Unemployment Insurance Program Letter No. 1145

To: All State Employment Security Agencies
Subject: Procedures for Implementation of the *Java* Decision

At a nationwide series of meetings with representatives of all State agencies in August 1971, Manpower Administration staff discussed draft procedural guides which were proposed for implementation of the requirements of the Supreme Court's decision in the *Java* case.

Under separate cover, we are sending to each State agency five copies of the procedures, revised in the light of the August discussions.

UIPL No. 1126 advised that States should issue as quickly as possible, but not later than September 1, 1971, predetermination procedures to provide for the necessary notice and hearing opportunity to claimants and employers. Later the States were informed through the Regional Manpower Administrators that any State that must have the *Java* procedures prepared by the Manpower Administration before it could implement changes in its predetermination procedures would have until two weeks after receipt of the *Java* procedures to effectuate the necessary changes in its procedures. Accordingly, States that have not revised their procedures should do so as soon as possible, with an implementation date not later than two weeks after receipt of the *Java* procedures.

/s/ PAUL J. FASSER, JR., Deputy Assistant Secretary for Manpower and Manpower Administrator

Attachment to UIPL No. 1145

Procedures for Implementing The Java Decision Requirements

Procedures for Implementing the Java Decision's Requirements

I. Introduction

The material contained in this statement discusses the procedural implications of the *Java* decision by the U. S. Supreme Court. The Court's opinion in this case was primarily an explanation of the reasons for its decision rather than an explanation of the procedures to be followed in applying the decision and its opinion. The reasoning of the Court in support of its decision is, however, broader in scope than the factual situation in the specific case it was considering. Other cases now pending in the Federal Courts may reach the Supreme Court and elicit from it more specific guidance as to the procedures required in the adjudication of unemployment benefit cases.

Pending such further guidance by the Supreme Court, procedures implementing the *Java* decision must nonetheless be adopted even though it is recognized that changes may later be necessary and that experience may show that certain of the procedural choices are more and others less effective in meeting the requirements stated by the Court and attaining the statutory objectives which the Court described.

Unemployment Insurance Program Letter No. 1126 states the Manpower Administration's view that to meet the interpretation of section 303(a) (1) of the Social Security Act, given by the Court in its *Java* opinion, ''a State's law and procedure must provide for:

1. Paying benefits promptly, after a determination has been made in the claimant's favor, regardless of the pendency of the appeal period or of any appeal that has been taken from the determination; and

2. Providing reasonable notice to both the claimant and employer of the time and place of the pre-determination factfinding hearing.''

Promptness of Determination and Payment

In considering procedural steps to implement the requirements stated by the Court, the fullest weight must be given to the emphasis the Court repeatedly placed on the Congressional objective of achieving the promptest payment of benefits that is administratively possible.

''The objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee. Probably no program could be devised to make insurance payments available precisely on the nearest payday following the termination, but to the extent that this was administratively feasible this must be regarded as what Congress was trying to accomplish. The circumstances surrounding the enactment of the statute confirm this.''

(After citing the 1935 recommendations of the Committee on Economic Security and its staff's estimates of possible amounts and duration of unemployment benefits, the Court continued.) ''Other evidence in the legislative history of the Act and the commentary upon it supports the conclusion that 'when due' was intended to mean at the

[1] This does not imply, however, that Section 303(a)(1), SSA, sets no outside time limit on individual determinations of initial claims.

earliest stage of unemployment that such payments were administratively feasible after giving both the worker and the employer an opportunity to be heard. The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers 'to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief.'''

''Our reading of the statute imposes no hardship on either the State or the employer and gives effect to the congressional objective of getting money into the pocket of the unemployed worker at the earliest point that is administratively feasible. That is what the Unemployment Insurance program was all about.''

The Court's stress on speeding benefit payments to unemployed workers suggests that this factor appropriately is the key criterion to be used in choosing among alternative procedures for implementing the requirements stated in the decision. This objective of prompt payment seems clearly, in the Court's view, to suffuse the entire unemployment insurance program. The Court said: ''We conclude that the word 'due' in § 303(a)(1), when construed in light of the purposes of the Act, means the time when payments are first administratively allowed as a result of a hearing of which both parties have notice and are permitted to present their respective positions; any other construction would fail to meet the objective of early substitute compensation during unemployment.''

Requirement of Benefit Payment During Pendency of Appeals

Although the Court's decision dealt specifically only with the initial determination of a worker's eligibility made at the time of the worker's initiation of a claim series, the reasoning of the Court would lead to the conclusion that when redeterminations or appeal decisions allow benefits such benefits must be paid promptly without delay or suspension because of the pendency of an appeal or an appeal period. It would follow also that determinations and decisions that disqualify workers for benefits for lesser periods than the State statute would permit or for the maximum disqualification period do not justify withholding benefits for weeks following the benefit denial period specified in the disqualifying determination or decision. If the individual is able to work and available for work and otherwise meets requirements for entitlement for such weeks, he should be paid benefits for such weeks.

The Court did not pass on the effect of a subsequent redetermination or appeal decision reversing the initial determination awarding benefits or modifying it adversely to the claimant. Nor did it deal with the adequacy of a subsequent determination, based on a later and different issue, to deny benefits to the claimant. In the case of an appeal decision that reverses or modifies adversely a determination that allowed benefits, it seems clear that such a decision stops the payment of benefits. The Court recognized that appeal decisions involve de novo considerations and, of course, the parties to an appeal are given an opportunity for a fair hearing. As to redeterminations relating to the same issue and determinations relating to new and later issues, even though it is recognized that both categories are in issue before the Federal courts, it seems reasonable to assume that the same predetermination process that is sufficient to establish that benefits are ''due'' is sufficient to establish that they are not ''due.'' The procedural discussion in this document proceeds on this assumption.[2]

Requirement of Notice and Opportunity to be Heard

Most of the procedural discussion contained in this document deals with the predetermination hearing to which the Court referred in its conclusion (i.e., ''a hearing of which both parties have notice and are permitted to present their respective positions''). These particular procedures are not required for conformity with the Court's interpretation of section 303(a)(1). They are recommended as reasonable approaches which meet the requirements of the statute with due regard to the promptness of benefit payments that the Court has stressed. But they are not the only such approaches. The Court left to the States the choice of procedures to be used in predetermination fact finding proceedings, so long as the procedures provide to the parties reasonable notice and opportunity to be heard and result in the prompt payment of benefits.

The words ''hearing'' and ''be heard'' as used by the Court in the *Java* opinion are susceptible of more than one interpretation. That the Court did not use ''hearing'' to require a ''due process'' hearing, ''fair'' hearing or an ''evidentiary'' hearing would seem clearly to follow from its careful avoidance of the holding in *Goldberg* v. *Kelly* (397 U. S. 254), which the *Java* appellees had urged the Court to follow. In *Goldberg* v. *Kelly* the Court's majority had said that although ''statutory 'fair hearing' '' was not required (p. 266), welfare payments to a recipient who had initially been held eligible could not be suspended without a predetermination evidentiary hearing (p. 264). Instead, in *Java* the Court said specifically that:

''Although the eligibility interview is informal and does not contemplate taking evidence in the traditional judicial sense, it has adversary characteristics and the minimum obligation of an employer is to inform the interviewer and the claimant of any disqualifying factors. So informed, the interviewer can direct the initial inquiry to identifying a frivolous or dilatory contention by either party.''

Thus, although a State agency may choose, and in some cases most appropriately, to provide a conventional type of hearing such as an ''evidentiary,'' ''due process'' or ''fair'' hearing before making a determination of an unemployment benefit issue case, [3] it cannot be said that this is the Court's requirement.

The following points as to the character of the predetermination factfinding proceeding emerge from the Court's opinion.

1. The Court equated ''interview'' and ''hearing'' (It (the preliminary interview) . . . is an occasion when the claims of both the employer and the employee can be heard . . .) (402 U.S. 121, at p. 134)

2. The Court's recitation of the details of the California determination procedure early in its decision (402 U.S. 121, at pp. 126–127) notes carefully that, when the claim is filed, ''the employer is asked to furnish, within 10 days, 'any facts then known which may affect the claimant's eligibility for benefits'.'' Subsequently the Court noted, if the employer challenged eligibility, the interviewer is required ''to seek from any source the facts required to make a prompt and proper determination of eligibility.'' ''This,'' said the Court, ''clearly contemplates inquiry to the latest employer, among others.'' The Court then describes the claimant as appearing for his interview and being asked to answer questions, explain inconsistencies and offer his version of the facts. ''The interviewer is instructed to make telephone contact with other parties, including the latest employer, at the time of the interview, if possible . . . Interested persons, including the employer, are allowed to confirm, contradict, explain, or present any relevant evidence.''

3. The Court pointed out that a proceeding conducted ''informally'' which does not ''contemplate taking evidence in the traditional judicial sense,'' meets the traditional ''hearing'' requirement. (402 U.S. 121, at p. 134)

4. The purpose of the proceeding is to inquire into the claim and to obtain information that supports or opposes the claim.

5. The employer's contribution to the proceeding is to furnish *information*. His ''minimum obligation . . . is to inform the interviewer and the claimant of any disqualifying factors.'' The employer who ''has notice of the time and place of the preliminary interview'' has a ''responsibility to present sufficient data to make clear his objections to the claim for benefits and put the interviewer in position to broaden the inquiry if necessary.'' The employer ''who fails to present any evidence . . . has in effect defaulted . . .'' (402 U.S. 121, at p. 134)

6. The inquiry is to be controlled by the interviewer. The information elicited from the employer and the claimant becomes the basis for any necessary further inquiry to develop additional information that is required to make a determination. (402 U.S. 121, at p. 134)

Taking these enumerated aspects of the Court's use of the word ''hearing'' into account, at least two views can reasonably be taken of the Court's meaning and intent that are different from the conventional type of hearing.

For purposes of convenience one of these may be labeled the ''separate interview'' approach and the other the ''investigatory proceeding'' approach. (As will presently appear, these are labels and not precise descriptions.)

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[2] See also UIPL No. 1136, July 19, 1971 ''Draft Language to Implement the *Java* Decision,'' Explanatory Statement, Attachment No. 1, p. 2.

[3] This would be most appropriate, for example, in cases involving difficult issues of fact or law and multiple claimants. See UIPL No. 1126 and UIPL No. 1136.

Separate Interview

This approach says in effect, that the Court's reference to furnishing an employer an opportunity to be heard means giving the employer a reasonable opportunity to present his information and factual contentions about the claim in an effective manner. To provide such an opportunity: (1) the employer must be asked to supply a written statement of potentially disqualifying information and he may be called on the telephone to give more details when further statements from the claimant at the interview or before indicate that such a telephone inquiry is appropriate or necessary and; (2) in addition, the employer must be advised in any case involving a determination issue that he may also, if he wishes, appear in person or through a representative at the local office and supply such further information with respect to the claim as he may have to present. To meet this latter requirement States may request employers at the time they respond to the request for separation information to indicate whether they wish to appear at the local office to present information on the claim. Employers who reply affirmatively indicating a desire to appear would be notified of the date and place of the claimant interview and advised that they should call the local office to arrange for their own appearance and interview in sufficient time so that the information they then present may be used in the interview with the claimant. When the employer appears, a claims examiner will interview him concerning the claim and obtain from him such additional information as he has to offer.

As is apparent, this view of the Court's use of the word ''hearing'' rests on a conclusion that the Court did not refer to a proceeding in which both parties must be given an opportunity to appear at the same time and place to present their information in each other's presence. Instead, the Court used the term broadly to encompass a factfinding process which would assure that each party was permitted to present his version of the facts in writing and by personal appearance, be apprised of the substance of the other's position and then be given a further opportunity to respond when a response would be material to the determination.

Investigatory Proceeding

This approach takes a different view of the Court's use of the word ''hearing'': The ''hearing'' is to be a proceeding that is held at a specific time and place, at which the parties are given an opportunity to appear, in each other's presence, and to present their information on the issue to the examiner directly and in person. Consistent with this view, the notice of the time and place of the proceeding serves the purpose of advising the parties when and where they should be present if they are to attend.

The proceeding differs from the conventional hearing in some significant respects. The Court indicated that the proceeding is conducted in the form of an interview to obtain information, clarify or verify questionable statements, and seek explanations of inconsistent facts. It is conducted by an examiner whose responsibility it is to obtain all of the facts required for a prompt and proper determination of the claimant's right to benefits, and who may not act merely as an umpire or judge of conflicting contentions of opposing parties. Accordingly, he asks the questions of the parties and not they of each other (or, through their representatives, of themselves). It is informal and does not follow traditional modes of taking evidence. Information obtained outside the proceeding (written statements by the employer, telephone calls, etc.) may be given full consideration. In these circumstances, oaths, a verbatim record, subpoenas and cross-examination are not required and are not recommended.

States should also be mindful of our continued recommendation, expressed in UIPL 1126 that all State laws should authorize the State agency to transfer cases involving difficult issues of fact or law and multiple claimants to the appeal tribunal or the board of review for determination, following a full and fair hearing. (See UIPL No. 1136 for suggested legislative language for such authorizing statutory provisions.)

II. Current Claims Taking and Interviewing Procedures Affected by the Java Decision

In many States methods have been devised for identifying claims which require special handling for factfinding and nonmonetary determination, while permitting routine non-issue cases to be processed rapidly and economically.

Typically, this has involved brief questioning of claimants at the initial claims contact to obtain the reason for separation. When an issue has been raised by the claimant's statement, arrangements have been made for a subsequent factfinding interview at which the issue is inquired into. This has afforded time to make the monetary determination and obtain employer information. It has also limited extensive interviewing to cases where claimants continue to file claims. The postponement of the interview has eliminated interview and determination time for claimants who return to work or are monetarily ineligible.

Typically, the separating employer has been notified of the claim filed and the claimant's stated reason for separation. Employers have been asked to respond if they have any reason for questioning eligibility. The intent has been to have this response on hand when the previously scheduled time for the claimant's appearance arrives, thus permitting an interviewer[4] to conduct a factfinding interview based upon the employer's statement, as well as the claimant's. This kind of procedure has afforded the claimant an opportunity to rebut information furnished by the employer prior to the final determination. Interviewers have been expected to seek additional information needed for a proper determination if the employer statement is inadequate or he fails to respond.

The essential elements of this process will continue to be necessary under the following procedures. In addition, it will be necessary to afford an interested employer notice and opportunity to be heard in issue cases.

III. Factfinding Proceeding Required in Issue Cases Only

Essentially, opportunity for an interested employer to be heard is required only when there is an issue as to benefit entitlement. Questions involving chargeability only would not be governed by the requirements of the Court's decision. When the claimant has indicated that he was separated for lack of work, and the employer does not dispute this statement, no change in existing procedure is required. When the information given by a claimant upon filing his claim, taken together with the separation information furnished by the employer, can result only in ineligibility or disqualification, there is no necessity to afford the employer an opportunity to appear. When issues do not involve any employer who is an interested party, the predetermination factfinding proceeding presumably would differ little from present factfinding interviews.

Interested Parties

State law will determine who are interested parties in addition to the claimant. Only employers who are interested parties must be afforded an opportunity to appear in predetermination proceedings. In most States, when an initial claim is filed, only the separating employer is an interested party. In some States, however, all base-period employers (as well as the separating employer) are interested parties. Whether (and which) employers are interested parties in connection with issues arising during a claim series also depends upon provisions of State law.

IV. Promptness of the Determination Process

Determinations on issues arising in connection with new claims may be considered on time within the meaning of the Court's requirement for promptness if accomplished no later than the second week after the week in which the claim is effective.

The proposed time limit provides for completion of the determination process on normal claims (nonretroactive) by the end of the week in which the claimant would be certifying to his first compensable week, regardless of the type of ''week'' used by the State.

These are examples of how this time limit for promptness would work out with a claim filed on August 12 (Thursday) in three different types of State ''weeks'':

[4] Anyone, whatever his title, who interviews parties and others to obtain the facts necessary for making a determination.

Type of State ''week''	Effective date of claim	Time limit for determination
1. Calendar week (claims predated to preceding Sunday).	August 8 (Sunday)	August 27 (last working day of the second week after week for which the claim was effective).
2. Calendar week (claim post-dated to following Sunday).	August 15 (Sunday)	September 3 (last working day of second week after week for which the claim was effective.
3. Flexible week (claim effective on date of filing).	August 12 (Thursday)	September 1 (last working day of second (flexible) week after week for which the claim was effective).

Prompt mailing of notices is critical to prompt completion of the process. Mailing times involved will often make it difficult or perhaps impossible to achieve the promptness contemplated when notices to employers are prepared and mailed centrally. For this reason the procedures proposed here envision mailing of such notices from local offices. An employer's failure to respond on time to notices should not be permitted to delay proceedings.

V. Scheduling and Notification Process

An opportunity to appear requires that the parties be informed of the time, place and nature of the proceeding so that the parties can know and protect their rights.

A. Notification of Parties (See subsection B as to mass separations.)

The procedures for providing notice to claimants and employers include new elements designed to inform the parties of their opportunity to appear.

1. Notice to Employer

a. Notice of Claim Filed and Request for Separation Information

Informing employers of their right to appear should be tied in with the current practices, in most State agencies, of mailing notices of claims filed.[5]

The notice of claim filed should contain the following information:

(1) The claimant's stated reason for separation;

(2) That the employer must post his return of the notice within *5 calendar days* of its mailing by the agency with any information he has concerning the circumstances of separation or any reason he has to question the claimant's eligibility;[6]

(3) The consequence under State law of his failure to respond to the notice;

(4) That the claim will be determined on the basis of available information in the absence of a reply from him;

(5) That in cases where issues[7] are raised by the information obtained from him or the claimant he may attend a predetermination factfinding proceeding;

(6) That he is not required to attend such a proceeding and, if he chooses to rely on written information rather than appear in person, it will be given full consideration in the making of the determination;

(7) That he should reply as to whether or not he wishes to attend such a proceeding in the case, and that if he replies that he wishes to attend, he will be notified of the time and place; and

(8) That benefits will be paid immediately if allowed, even though an appeal is taken.

b. Notice to Employer of Proceeding

There are at least two methods for notifying the employer of the actual place and time of the proceeding. One method is to schedule the proceeding automatically after discovery of an issue, and to provide information concerning the time and place of the proceeding in the notice mailed to the employer. The proceeding would most likely be set for the time that the claimant is scheduled to report to the local office.[8] This method would have the advantage of providing earlier advice to the employer, thus giving him a better opportunity to decide whether he can, or wishes to, attend the proceeding. A major disadvantage would be that such a procedure would require an advance allocation of space and claims examiners' time for such proceeding before it is known whether the employer will appear.

The second method, which appears to be preferable, is to schedule the proceeding after an employer has indicated on his response to the notice of claim filed that he intends to appear. Better estimates can then be made of the time required for a particular proceeding and the time required, in the aggregate, for all proceedings scheduled on a particular day. It also makes possible more flexibility in scheduling predetermination proceedings for cases in which the employer elected not to appear. The disadvantage of this procedure is that it requires two contacts with employers who indicate a desire to appear—the notice of claim filed and the notice of time and place of the proceeding.

When an employer has signified his intention to appear at the proceeding, a notice of the time and place should be mailed to him at least three calendar days before the scheduled date of the proceeding.[9] If, for example, the proceeding is to be held on Tuesday, the notice should be mailed no later than the preceding Friday. The next three calendar days, the days of notice, would be Saturday, Sunday, and Monday. (Note that the mailing date has not been counted and the date of the proceeding is the day following the specified number of calendar days of notice.)

When circumstances require that such notification be given by telephone (as is likely to be the case in separate interview proceedings), an appropriate record should be made of the exact information given the employer, the name of the person to whom the information was given, and the date and hour of the telephone call.

c. Content of Notice to Employer of Proceeding

If the employer who has requested an opportunity to appear is to be given an effective opportunity, he must be given certain basic information concerning the proceeding.

This should include, at least:

(1) The time, place and purpose of the proceeding; and

(2) His right of representation and that any person designated to appear at the proceeding to present information on the employer's behalf should either have direct knowledge of the circumstances surrounding the issue or be able to present the written statement of a person who has such knowledge and/or the employer's pertinent, written records.

2. Notice to Claimant of Proceeding

Claimant must be informed of the predetermination proceeding but the method employed for notification will vary according to whether advance notice is required and whether other interested parties are involved in the determination.

When no other interested parties are involved, in most instances it will be possible to hold the proceeding immediately and no written notice will be required. The claimant should be informed of the purpose and nature of the proceeding.

If the proceeding is scheduled for a later date, the notice to the claimant should be in writing. This may be given by entry on the

[5] A State agency which requires employers to submit separation notices to the agency automatically upon the separation of a worker will also need to use notices of claim filed or other appropriate notice to the employer of his right to appear and be heard.

[6] If the fifth day is a Saturday, Sunday, or holiday, then the period runs to the next day which is not a Saturday, Sunday, or holiday. The five-day requirement is suggested to State agencies as appropriate to meet the promptness limit provided in section IV. States may wish to vary the requirement for areas where mail delivery problems require it.

[7] An explanation to employers of what is an ''issue'' in the case of a benefit claim appropriately is included in an employer handbook or other general informational material that is given to all registered employers. If such an explanation has not been supplied to all employers, it should accompany the notice of claim filed.

[8] Not applicable if the State uses separate interview type of proceeding.

[9] Where experience demonstrates that more time is needed to provide reasonable notice, this period may be modified.

claimant's reporting booklet or on a separate notification form. The following information should be provided in the notice:[10]

a. The time, place and purpose of the proceeding;

b. Advice that the employer might attend;[11]

c. The need for particular evidence (doctor's statement, etc.) and the claimant's right to bring witnesses;

d. His right of representation; and

e. That he notify the local office if he cannot attend the proceeding at the scheduled time and the reason, so that the office may reschedule the proceeding or take whatever other action is appropriate.

3. Time and Place of Proceeding

The time and place of the proceeding must neither burden the claimant nor delay payment of benefits to which the claimant may be found entitled. It is recommended that the proceeding be scheduled for the day and hour on which the claimant is scheduled to report at the local office.[12] By so scheduling the proceeding, the local office procedures for equalizing workloads by spreading claimant reporting periods throughout the days of the week would better be maintained.

4. Requests for Postponement or Continuance

Since requests for postponement or continuance of a proceeding may, if granted, delay the payment of benefits that may be due, they should not be granted except in compelling circumstances. Such a request by an employer, however, can often be satisfied by asking him to appear separately from the claimant or inviting him to submit his information in writing or by telephone.

Since the claimant is the initiating party who seeks prompt payment of benefits and is moreover required as a condition of getting benefits to report when requested by the agency, his presence at the proceeding is generally assured. On the infrequent occasions when he requests a postponement it should be granted where information from him is necessary to make the determination and it would be difficult to obtain from him in writing.

B. Notice Requirements in Mass Separations

In the case of mass lay-offs where employers furnish lists of laid-off workers to the agency there is no need for notice to the employer and opportunity to be heard in person because lack of work is the cause of separation.

In mass cases involving issues, such as labor disputes, special procedures may be necessary, and as recommended in UIPL Nos. 1126 and 1136, consideration should be given to referral of the claims to the appeal tribunal or board of review for the initial determination.

[10] The detail that needs to be included in the individualized portions of such notices to claimants can be reduced by attaching an adequate printed explanation to each notice or by including appropriate explanatory detail in claimant handbooks or pamphlets.

[11] Not applicable if the State uses separate interview type of proceeding.

[12] Not applicable if the State uses separate interview type of proceeding.

VI. Requirements for Notice When Issues Arise After the Initial Determination

In general, the preceding section applies also to issues that arise during a claim series or to an additional claim. Insofar as such issues involve special consideration, however, they are discussed in this section.

The *Java* case did not involve an issue arising after the initial determination. The reasoning of the Court, however, requires that interested employers be given notice and opportunity to be heard with respect to such issues.

A. Issues Arising During a Claim Series

When an issue arises during a claim series and the claimant is the only interested party, no substantive changes from existing procedures are required. A typical situation would involve a claimant who, during his regular interview, reports an illness during the week being claimed that might warrant denial of benefits for the week. All necessary actions can be taken on the spot, and the claimant may be informed of the issues and of his right to hearing. Factfinding can then take place, and a determination can be made.

When an issue arising during the claim series involves any interested party in addition to the claimant, notice and an opportunity to be heard must be given to such other party. The determination of the issues may not be made until such notice and opportunity has been provided. Such determinations will be considered on time within the meaning of the Court's requirement for promptness if issued no later than the end of the week following the week in which the issue arises.

B. Additional Claims

An additional claim begins a new claim series and involves a new reason for unemployment. Unlike a claim that may begin a benefit year, however, such a claim does not require a monetary determination.

It follows that payment of benefits cannot commence until a determination of entitlement is made after notice to the parties and opportunity to be heard. When an issue arises in connection with an additional claim, and notice must be afforded to parties other than the claimant, a proceeding must be scheduled for a date after the filing of the claim. As in the case of new claims, employers should be given notice of the claim and five calendar days in which to respond—and to state whether they wish to appear in person. Employers who wish to attend should be afforded at least three calendar days' advance notice of time and place of the proceeding. If the employer elects to appear, a determination issued in the second week after the additional claim is effective will be considered on time within the meaning of the Court's requirement for promptness. In other cases it should be possible to issue the determination by the end of the week after the additional claim is effective.

VII. Conduct of the Predetermination Proceeding

A. Investigatory Proceeding

Although the appearance of an employer or his representative adds a new element, it need not materially change the content of the factfinding interview from that conducted by interviewers prior to the *Java* decision. While each State must determine how its proceedings will be conducted, it is our recommendation that: the proceeding should not be recorded, the parties should not be required to testify under oath, and the subpoena procedure should not be used. Each party, however, may have witnesses appear in his behalf, and where necessary the party or the witness may avail himself of the services of an interpreter whom either he or the agency may provide.

The interviewer should tactfully but firmly control the proceedings. Each party should be given an opportunity to present his view of the facts, and should be given rebuttal opportunity. The interviewer may and should ask questions to elicit from the parties and their witnesses information he deems relevant to the issues in the case at hand. He should have the parties' questions and answers directed to him rather than permit questions, discussion or argument between the parties.

In some instances a party may wish to record the proceeding. While the agency cannot prohibit such recordings, the practice should be discouraged, as it may disrupt the conduct of the proceeding. Both parties must be informed in such cases that the agency record will be the only official record to be used in making the determination or in any subsequent appeals.

1. Preparation of Factfinding Report

State practice in the preparation of factfinding reports may be used at a predetermination factfinding proceeding. The common practice of taking notes which can be used in preparing factfinding reports will suffice. Since the factfinding report, essentially, is a report of the interviewer, it is not necessary that the individual parties sign the report. However, some State agencies may wish to have parties sign certain statements which appear to be vital to the proceedings, and this may be done.

2. Separate Appearances of Claimant and Employer

The investigatory type of predetermination proceeding is intended to afford the employer an opportunity to appear at the factfinding interview at the same time as the claimant. Provision for employer appearance should not be made for any place other than the local office where the claimant is filing and the proceeding is scheduled. If an employer requests an opportunity to make his appearance elsewhere, he should be asked to submit his information in writing instead, since only the claim-filing office has records and knowledge of the case.

If an employer wishes to appear at the claim-filing office before the scheduled time for the proceeding, he should be permitted to do so if at all possible, but he should be informed that the claimants appearance will not be rescheduled to conform to his. (This in effect changes the proceeding to the separate interview type explained in VII. B. below.)

In responding to a request by an employer for separate appearance, he should also be informed again that information may be

submitted in writing and it will be given full consideration in the making of the determination.

3. Representation of Parties

Each party has the right to be represented by a person of his choice, but this right has been seldom exercised at the determination level. In view of the *Java* decision, representation at the factfinding proceeding may increase. The handling of the representative adds a new dimension to the interviewer's task. The interviewer should ascertain at the outset the status of the representative and he should inform him that his participation will be limited to the presentation of information necessary to decide the issues, and as to which he has direct knowledge or is able to present the written statement of a person who has such knowledge and/or the employer's pertinent written records.

B. Separate Interview

This type of proceeding consists essentially of providing for a personal interview on the determination issues with an employer who has requested it in addition to the predetermination factfinding interview with the claimant. Accordingly, the considerations that make recordings, oaths, and subpoenas inappropriate in the investigatory proceedings apply with equal or greater force in the separate-interview proceeding. No change from pre-Java practices would appear necessary in the claimant-interview portion of the proceeding.

The employer-interview part of the proceeding would differ from any other factfinding interview conducted by the interviewer only in the need for the interviewer to take into account the fact that the interview takes place as the result of the employer's request and that it usually supplements written information already provided by the employer. Presumably, the employer in such an interview has additional information and the interviewer should permit him to present that additional information before any questions designed to get other information are directed to the employer. The employer may wish to raise questions that he believes should be put to the claimant. These should be accepted when they are pertinent to claimant's benefit eligibility and the employer should be assured that they will be taken up in the claimant interview.

Subparagraphs A. 1 and 3 would appear to be generally applicable also to separate interviews.

C. Referral of Cases to the Appeals Authority

Certain types of cases are not suited to the predetermination proceeding contemplated for the great majority of determination issues. These are cases involving difficult questions of fact or law and multiple claimants. It is recommended that State agencies use their authority to transfer such cases to appeal tribunals or boards of review for determination. If a State agency now lacks legislative authority for transferring such cases to an appeals body, it should seek such authority.[13] As in other types of predetermination proceedings, promptness is crucial.

D. Notice of Determination

Present State practices with respect to the preparation and distribution of Notices of Determination are not affected by the changes in procedures required to insure that both claimant and employer(s) are given reasonable notice and opportunity to be heard. Any needed adaptations would present no problem so long as they do not interfere with the prompt completion of the determination process. In any event, the claimant is entitled to a written Notice of Determination as provided in section 6013, Standard for Claim Determinations-Separation Information, Part V of the *ES Manual.*

VIII. Payment of Benefits During Investigation, Determination, Redetermination and Appeals (Including Higher Authority)[14]

A. Under the *Java* decision benefits allowed in an initial determination may not be withheld by reason of the pendency of the appeal period or of an appeal.

B. In addition, the reasoning of the Court in the *Java* decision supports the payment of benefits as indicated below.[15]

1. Redeterminations

Since practices vary so widely among the States, the following covers only the most common kinds of redeterminations: (a) When a claimant was initially found ineligible and another interested party is involved, notice and opportunity to be heard in a predetermination proceeding must be offered both parties before a redetermination can be made. No benefits may be paid until the redetermination is completed and then benefits are to be paid immediately or denied, according to the redetermination. (b) When a claimant was initially found eligible, notice and opportunity to be heard must be afforded to the claimant and any other interested party before a redetermination can be made that could modify or reverse that initial determination. In the meantime benefits may not be withheld. Benefits will be paid or denied upon the issuance of the redetermination and in accordance therewith.

2. Appeals

Except as it may be precluded by a ''double affirmance'' provision in the State law, an appeal decision should be given immediate effect when it is issued and benefits should be paid or denied in accordance with it regardless of the issue involved or previous determinations and decisions and regardless of the fact that a further appeal may be taken.

3. Payment of Benefits for Weeks Not in Dispute

In the case of an appeal, it has been the practice to pay benefits only for weeks ''not in dispute.'' For example, in a voluntary-quit case where State law provides a variable 1-to-6 week disqualification, and a 3-week disqualification has been assessed, benefits would be withheld for 6 weeks, because the appeal decision could result in increasing the disqualification. The reasoning of the Court in the *Java* case leads to the conclusion that benefits after the 3-week disqualification initially imposed are due and are to be paid if the claimant is eligible for such later weeks.

4. Suspension of Benefit Payments During a Claim Series

In the Case of any week claimed during a claim series as to which a question arises, such as a question of work refusal, a determination must be made as to whether benefits are payable. Before such a determination, benefits will not be withheld.

When the determination has been made following appropriate predetermination procedures, benefits must then be paid or denied in accordance with that determination. When the question relates to eligibility or possible fraud for past weeks only, benefits claimed for current weeks may not be suspended while an investigation is conducted. They may be denied in appropriate cases, however, for weeks claimed after a determination or redetermination has been made of the issue(s) with respect to such prior weeks, following notice to the interested parties and opportunity to be heard. In order to minimize overpayments this process should be completed as quickly as possible.

IX. Interstate Claims, Federal Claims and Monetary Determination Issues

A. Interstate Claims

Although the procedural concepts outlined in this document have been stated in terms of intrastate claims, they apply as well to interstate claims. The interested employer in a determination issue arising in an interstate claim must be given an opportunity not only to submit information concerning the claim in written form but also, if he wishes, to appear either in person or by representative and submit any additional information he has to offer that bears upon the issue. Since it is not necessary that an employer who wishes to make such an appearance be interviewed in the claimant's presence, his opportunity to appear and be interviewed on the claim may be provided to him in the office of the liable State where the determination will be made rather than in the agent-State local office where the claimant is to be interviewed. Obviously, such an interview on an interstate claim with an employer who is located in the liable State and wishes to make an appearance would need to be held at a time when any information he may present can be taken into

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[13] Appropriate legislative language for this purpose was transmitted to State agencies with UIPL No. 1136, July 19, 1971.

[14] Some increase in overpayments will result from the new requirements for immediate payment of benefits. If State law requires recovery, claimants should, of course, be informed that benefits being paid under such circumstances may (according to requirements of State law) be subject to recovery or future offset as the case may be. This information may be included in general informational material furnished to all claimants. In any event, it should not be presented in such a manner as to discourage claimants from accepting the benefits due them.

[15] For additional discussion see Explanatory Statement, Attachment No. 1 to UIPL No. 1136, July 19, 1971.

account in making the determination. If the interested employer is located in the agent State, the latter will have the responsibility to notify the employer of the opportunity to appear at the local office, and if he elects to make an appearance, to schedule it at an appropriate time.

B. Application of Java Decision to Federal Unemployment Insurance, Training Allowances and Related Payments

The requirements for paying benefits promptly after a determination has been made in the claimant's favor, regardless of the pendency of the appeal period or of any appeal that has been taken from the determination, are applicable to Federal claims. The requirement of notice to an interested employer and opoprtunity to be heard will, however, have no effect on those programs which do not involve employers as interested parties.

Following are specifics on application of the requirement for notice and opportunity to be heard relating to the various kinds of Federal claims.

UCFE: (Unemployment Compensation for Federal Employees)

When a private employer is an interested party to a UCFE claim, the procedures for notice and opportunity to be heard with respect to State UI claims are applicable.

When a Federal agency is an interested party to a UCFE claim, the *Java* decision does not change present methods of processing so long as findings of the Federal agency, in writing, which are final and conclusive, are applicable in determining the claim.

UCX: (Unemployment Compensation for Ex-Servicemen)

When a private employer is an interested party to a UCX claim, the procedures for notice and opportunity to be heard with respect to State UI claims are applicable.

When a Federal agency which employed the claimant as a civilian employee is an interested party, the procedures applicable to UCFE claims apply. For the purpose of the *Java* procedure, a branch of the Armed Forces for which a UCX claimant served on active military duty is never considered to be an interested party with respect to reasons for separation or for not reenlisting or for not continuing on active duty, since the State agency does not apply the eligibility or disqualification provisions of the State unemployment insurance law to any of these. Thus in such cases the notice-and-opportunity-to-be-heard requirement of the *Java* decision is not applicable.

TRA: (Trade Readjustment Allowances)

The procedures for implementing the *Java* decision for State UI claims, with respect to notice and opportunity to be heard, are applicable to TRA claims with respect to employers who are interested parties to an issue.

Training Allowances, Disaster Unemployment Assistance and Other Similar Federal Payments

The procedures implementing the *Java* decision, with respect to notice and opportunity to be heard, have no effect on factfinding procedures for determination of issues arising under the Manpower Development and Training Act (MDTA), the Work Incentive Program (WIN), or the Disaster Unemployment Assistance provisions of the Disaster Relief Act of 1970. There is no employer or other interested party involved in such cases. Established procedures for the factfinding claimant interview and notice of determination satisfy the requirements for predetermination proceedings.

C. Monetary Determinations

It should not be assumed that, because the facts in the *Java* case presented a nonmonetary determination issue, the Court's requirements do not also apply to monetary determinations and redeterminations. The principles are equally applicable when monetary determinations or redeterminations involve issues of fact although the manner in which they must be applied necessarily is affected by the nature of the issues and the processes required to resolve them. Some monetary ''issues,'' for example, are simply questions of computation or other operational matters that relate entirely to the processing of data already contained in the agency's records. To settle such questions, the State agency need not seek information from either the employer or the claimant and there is no occasion for appearance by either at an interview.

Some monetary issues, however, present questions which cannot be resolved from a review of the agency's records. For example, a claimant may question the correctness of an employer's wage report underlying the agency record on which the claimant's monetary determination was based. Yet another claimant may contend that his monetary determination has not taken into account wages he earned during his base period that an employer omitted from his report because, in his view, there was no employment relationship. Common agency practice in such cases is to make a field investigation including a visit to the employer's place of business, a review of his records and an interview with the employer or the appropriate members of his staff who have the necessary pertinent information. The facts thus obtained, together with the information submitted by the claimant, are then used in resolving the issue and as the basis for the necessary monetary redetermination. When this is the case, the process used has itself provided an appearance by the employer in the factfinding proceeding in addition to his written submittal. There would ordinarily appear to be no need to provide the employer in such cases with yet a further opportunity to appear in the factfinding proceeding that precedes the monetary determination or redetermination in question. The common agency practice of reinterviewing the claimant after the results of the field investigation are available assures claimant of his opportunity to appear and be heard before the determination is made.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–139]

National Environmental Policy Act; Mars Surveyor 2001 Mission

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216, Subpart 1216.3), NASA is providing notice that although a Draft Environmental Impact Statement (DEIS) for the Mars Surveyor 2001 Mission was prepared and public comments were elicited and received, a Final Environmental Impact Statement (FEIS) will not be prepared. Instead, NASA has made a finding of no significant impact (FONSI).

The Mars Surveyor 2001 (MS 01) mission as proposed in the DEIS originally consisted of the launch and operation of two separate spacecraft—the MS 01 orbiter and the MS 01 lander/rover. The DEIS addressed the potential environmental impacts associated with implementation of this mission configuration (the Proposed Action) and included a risk assessment for potential launch accidents involving the release of radioactive material from the MS 01 lander/rover spacecraft. The MS 01 orbiter spacecraft would carry no radioactive material or other extremely hazardous materials or equipment and, hence, would involve a conventional launch entailing no significant effects to the quality of the human environment. The DEIS also addressed the potential environmental impacts of alternatives to this Proposed Action as well as the No Action alternative.

Events that occurred during the intervening months since publication of the DEIS, including loss of the Mars Polar Lander mission on December 3, 1999, early in the public review period for the DEIS, have resulted in a reevaluation by NASA of the Mars Surveyor 2001 mission. As a result of that reevaluation, NASA has proposed to reconfigure the Mars Surveyor 2001 mission to launch only the MS 01 orbiter spacecraft in 2001. Thus the FONSI issued today covers the proposed reconfigured Mars Surveyor 2001 mission, specifically launch of the MS 01 orbiter only. Should NASA decide at

some future date to launch the MS 01 lander/rover spacecraft, a separate NEPA document will be prepared in accordance with applicable policy and procedures.

The MS 01 orbiter would be launched in April 2001 from Cape Canaveral Air Force Station (CCAFS), Florida, onboard a Delta II 7925 expendable launch vehicle.

DATES: Comments in response to this FONSI must be provided in writing to NASA on or before December 28, 2000

ADDRESSES: Comments in response to this FONSI should be addressed to Mr. Mark R. Dahl, NASA Headquarters, Code SD, 300 E Street SW, Washington, DC 20546. The DEIS prepared for the Mars Surveyor 2001 mission which supports this FONSI may be reviewed at:

1. NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

2. NASA, Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida, 32899 (321–867–2622). Please call Ms. Penny Myers at 321–867–8007 so that arrangements can be made.

3. Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179). Other locations where the DEIS can be examined are listed in the Supplementary Information section below.

A limited number of copies of the DEIS are available to persons wishing a copy by contacting Mr. Dahl at the address or telephone number provided herein. The DEIS is also available in Adobe Acrobatr Portable Document Format (PDF) at *http://spacescience.nasa.gov/pubs/Mars01EIS/ms01webpage.html* on the Internet.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Dahl, 202–358-1544.

SUPPLEMENTARY INFORMATION: The DEIS may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

1. NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4191).

2. NASA, Dryden Flight Research Center, Edwards, CA 93523 (661–258–3449).

3. NASA, Glenn Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

4. NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–6255).

5. NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

6. NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

7. NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

8. NASA, Stennis Space Center, MS 39529 (228–688–2164).

On November 29, 1999, NASA published its Notice of Availability for the DEIS for the Mars Surveyor 2001 Mission (64 FR 66668), and distributed over 125 copies to potentially interested Federal, State and local agencies, organizations, and individuals. In addition, the DEIS was available in electronic format from a NASA server on the Internet. The U.S. Environmental Protection Agency published its Notice of Availability on December 3, 1999 (64 FR 67897), initiating the 45-day review and comment period.

At the time of publication of the DEIS, NASA's Proposed Action was to continue preparations for and to implement the Mars Surveyor (MS 01) mission to Mars. The MS 01 mission was to consist of two separate launches, one containing an orbiter spacecraft and the other containing a lander/rover spacecraft. NASA proposed to launch the MS 01 orbiter spacecraft from Vandenberg Air Force Base (VAFB), California, in March/April 2001 onboard a Delta II 7925 expendable launch vehicle, and the MS 01 lander/rover spacecraft from Cape Canaveral Air Force Station (CCAFS), Florida, in April 2001 onboard a Delta II 7425.

The purpose of and need for the action addressed in the DEIS was to further the scientific objectives of NASA's Mars Surveyor Program by continuing the exploration and characterization of the planet. The Mars Surveyor Program had consisted of the Mars Global Surveyor, already in orbit about Mars and conducting its scientific mission, and the Mars Surveyor 1998 (MS 98) orbiter and lander spacecraft. At the time of publication of the MS 01 DEIS, the MS 98 orbiter had failed to achieve orbit about Mars and was declared lost; and the MS 98 lander, the Mars Polar Lander, was on its final approach to entry into the atmosphere of Mars.

Specifically, at the time the DEIS was issued, the proposed MS 01 mission would have continued the global reconnaissance of Mars (via the MS 01 orbiter) and would have intensively studied a local area of the planet (via the MS 01 lander/rover). During its planned mapping phase of one Martian year (about two Earth years) the MS 01 orbiter would have conducted a detailed mineralogical analysis of the planet's surface and measured the radiation environment. The orbiter would have also acted as a communications relay for the lander/rover. During its 90-day primary mission the MS 01 lander/rover would have performed in situ science on the surface of Mars, exploring a potential landing site for future missions in the mid-latitude highlands of the planet by studying soil and atmospheric chemistry and radiation at the surface.

Two instruments on the MS 01 lander and two instruments on the rover would have carried minor radioactive sources. The rover would also have used three radioisotope heater units for thermal control. The total radioactive inventory onboard the MS 01 lander/rover would have been approximately 3.70×10^{12} Bq (100 Ci).

Alternatives to the Proposed Action that were evaluated in the DEIS consisted of the following:

(a) Orbiter and Lander-Only Mission Alternative: Launch the MS 01 orbiter as planned in the Proposed Action; eliminate the rover, and launch the lander-only spacecraft as planned in the Proposed Action; perform remote science data gathering from orbit and stationary in situ science by the lander.

(b) Orbiter-Only Mission Alternative: Launch the MS 01 orbiter as planned in the Proposed Action; eliminate the lander/rover launch; perform only remote science data gathering from orbit.

(c) No-Action Alternative: NASA would cease preparations for and not implement the MS 01 mission.

In the DEIS, the Delta II 7925 (with nine strap-on solid rocket motors called GEMs) was used as the basis for assessing environmental impacts from both launch sites. The environmental impacts of the Delta II 7425 (with only four GEMs) would be expected not to exceed those of the Delta II 7925.

The DEIS addressed the environmental impacts of normal launches of the two spacecraft comprising the Proposed Action. Such impacts would be associated principally with the exhaust emissions from each of the Delta II launch vehicles. These effects would include short-term impacts on noise levels, air quality within the exhaust cloud at and near the launch pads, and the potential for acidic deposition on the vegetation, wetlands, and surface water bodies at and near each launch complex, particularly if a rain storm occurred. Some short-term ozone degradation would occur along the flight paths as the launch vehicles pass through the stratosphere and deposits ozone-depleting chemicals from the solid rocket motors.

The DEIS evaluated a variety of non-radiological environmental impacts that might arise from accidents that could occur during preparation for and launch

of the MS 01 spacecraft at CCAFS and VAFB. The potential for off-site consequences would be limited primarily to a liquid propellant spill during fueling operations of the Delta II second stage and a launch failure at or near the launch pad. A launch vehicle failure on or near the launch area during the first few seconds of flight could result in the release of the propellants (solid and liquid) onboard the Delta II, the upper stage, and the spacecraft. The resulting emissions would resemble those resulting from a normal launch. Liquid propellants would largely burn with some unburned propellant dispersed in the atmosphere. Some unburned solid and liquid propellants could enter surface water bodies and the ocean. Falling debris would be expected to land on or near the launch pad, resulting in secondary ground-level explosions and localized fires.

For both normal launches and non-radiological environmental impacts arising from an accident, there would be no impacts on cultural resources or floodplains. No other non-radiological environmental impacts of concern have been identified. The launch of Delta II vehicles from CCAFS are covered by existing U.S. Air Force (USAF) Environmental Assessments and FONSIs. There have been no subsequent substantial changes to the Delta II launch vehicle that are relevant to environmental concerns. In addition, there are no significant new circumstances or information relevant to environmental concerns that bear on the launch of the Delta II class vehicle.

The DEIS also addressed a concern associated with launch of the MS 01 lander/rover spacecraft involving potential launch accidents that could result in release of some of the radioactive material onboard the lander/rover spacecraft. NASA's cooperating agency, the U.S. Department of Energy (DOE), performed a radiological risk assessment of potential accidents for the MS 01 lander/rover. The DOE's risk assessment for the MS 01 lander/rover indicated that the expected impacts of released radioactive material on or near the launch area, and on a global basis, would be small.

The 45-day public comment period on the DEIS closed on January 17, 2000. A total of six comment letters were received: two from Federal agencies, three from State agencies, and one from a local agency. The comments addressed the following issues: NASA's compliance with the Endangered Species Act at the VAFB launch site; NASA's use of Best Management Practices; and questions regarding the methodologies used to estimate radiological consequences. These comments provided no new information or analyses that indicated a need to change the DEIS risk assessment of impacts presented in the DEIS.

Following the loss of the Mars Polar Lander, NASA instituted comprehensive reviews by high-level panels of experts not just of the loss of this spacecraft, but also of its overall approach to Mars exploration. These reviews resulted in a number of reports that have been publicly released. NASA is responding to these reports and recommendations, and is developing a broad restructuring of its approach to Mars exploration. Recommendations were also made that would directly affect implementation of the MS 01 mission. Specifically, it was recommended that launch of the MS 01 lander/rover spacecraft mission component be delayed to a future date yet to be determined, and that the orbiter spacecraft be launched in 2001 as originally proposed in the DEIS for the MS 01 Mission with the exception that the launch take place from CCAFS instead of VAFB. In March 2000, NASA adopted these recommendations regarding the Mars Surveyor 2001 mission.

The assessment of non-radiological environmental impacts in the DEIS was prepared on the basis of the larger Delta II 7925 vehicle at both launch sites. Therefore, the assessment of impacts both for a normal launch of the MS 01 lander/rover from CCAFS and for potential launch accidents that do not involve release of radioactive material is directly applicable to launch of the MS 01 orbiter from CCAFS and provides a conservative upper bound on those impacts. Furthermore, since the MS 01 orbiter does not utilize radioactive material, the risk assessment of potential radiological consequences for a launch accident involving the MS 01 lander/rover at CCAFS does not apply. Finally, the question submitted during the public comment period regarding compliance with the Endangered Species Act at VAFB does not pertain to the proposed MS 01 orbiter launch from CCAFS. Thus, given that the proposed reconfiguration of the Mars Surveyor 2001 mission to an orbiter-only launch from CCAFS does not entail any new or substantial changes to the potential environmental impacts evaluated in the DEIS, NASA has concluded that the DEIS adequately and accurately reflects the environmental impacts of the launch of a MS 01 orbiter spacecraft from CCAFS using a Delta II 7925 launch vehicle.

On the basis of the DEIS and USAF NEPA documentation on the Delta II class of launch vehicles, NASA has determined that the preparations for and launch and operation of an MS 01 orbiter-only mission would not individually or cumulatively have a significant effect on the quality of the human environment. Should NASA decide to launch the MS 01 lander/rover to Mars at some future date, additional environmental documentation will be prepared.

Therefore, NASA has made a finding of no significant impact and has determined that issuance of a Final Environmental Impact Statement is not appropriate. NASA will take no final action prior to the expiration of the 30-day comment period.

Edward J. Weiler,

Associate Administrator for Space Science.

[FR Doc. 00–30225 Filed 11–27–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Historical Publications and Records Commission; Programs Subject to Title IX

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of NHPRC programs covered by 36 CFR Part 1211 (Title IX).

SUMMARY: This notice describes the types of financial assistance that are provided by National Historical Publications and Records Commission (NHPRC) that are covered by Title IX of the Education Amendments of 1972, as amended (''Title IX''). Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities.

FOR FURTHER INFORMATION CONTACT: NHPRC, Nancy Copp, at 202–501–5603, email address, *nancy.copp@arch1.nara.gov.*, fax number 202–501–5601.

SUPPLEMENTARY INFORMATION: The NHPRC provides grants for projects that focus on documentary publications, records projects and other educational programs. The emphasis is placed primarily on the dissemination, accessibility and preservation of historical records bearing on U.S. history and also to further an understanding and appreciation of U.S. history. The program is carried in the Catalog of Federal Domestic Assistance (CFDA) as 89.003, National Historical Publications and Records Grants.

The final common rule for the enforcement of Title IX was published in the **Federal Register** by 21 Federal

agencies, including NARA, on August 30, 2000 (65 FR 52857–52895). NARA's portion of the final rule will be codified at 36 CFR Part 1211. Subpart F of the Title IX common rule requires each Federal agency that awards Federal financial assistance to publish a notice of the federal financial assistance covered by the Title IX regulations within 60 days after the effective date of the final rule. This notice fulfills that requirement for NARA. Failure to list a type of federal assistance in this notice does not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

Recipients of federal financial assistance from NARA are subject to Title IX , but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any. The following types of NHPRC grants may involve educational activities that are covered under 36 CFR part 1211:

1. Educational Programs and Fellowships. NHPRC provides fellowships in Archival Administration (9–10 month training experience in archival management), fellowships in Advanced Historical Documentary Editing, and the Institute for the editing of Historical Documents.

2. Records Grants. These grants ensure that records documenting the American Experience are saved and made available for public use.

3. Electronic Records Grants. These grants seek ways to ensure that records created today will be useable on tomorrow's technology.

4. State Boards Grants. These grants provide support for advisory bodies for historical records planning and for many projects carried out within the states to strengthen the Nation's archival infrasturcture.

5. Publication Grants. These grants provide support for the publication of documentary editions that explore the lives and actions of important figures and/or to bring to light major themes of U.S. history.

Dated: November 20, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–30178 Filed 11–27–00; 8:45 am]

BILLING CODE 7515–01–U

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 29, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 5, 2000.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2000 deadline.

2. *Date:* December 6, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education Programs at the October 1, 2000 deadline.

3. *Date:* December 7, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Western Hemisphere, submitted to the Division of Research Programs at the September 1, 2000 deadline.

4. *Date:* December 8, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education Programs at the October 15, 2000 deadline.

5. *Date:* December 8, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for National Heritage Preservation Program, submitted to the Division of Preservation and Access at the July 1, 2000 deadline.

6. *Date:* December 8, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Long-Term Projects I, submitted to the Division of Research Programs at the September 1, 2000 deadline.

7. *Date:* December 11, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Long-Term Projects II, submitted to the Division of Research Programs at the September 1, 2000 deadline.

8. *Date:* December 11, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education Programs at the October 15, 2000 deadline.

9. *Date:* December 11, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 714.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 1, 2000 deadline.

10. *Date:* December 11–12, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museum and Historical Organizations, submitted to the Division of Public Programs at the November 1, 2000 deadline.

11. *Date:* December 12, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for United States Newspaper Program, submitted to the Division of Preservation and Access at the July 1, 2000 deadline.

12. *Date:* December 13, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Schools for a New

Millennium, submitted to the Division of Education Programs at the October 1, 2000 deadline.

13. *Date:* December 14, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications for Collaborative Research in The Modern World, submitted to the Division of Research Programs at the September 1, 2000 deadline.

14. *Date:* December 15, 2000.

Time: 8:30 a.m. to 5:00 p.m.

Room: 430.

Program: This meeting will review applications for National Education Projects, submitted to the Division of Education Programs at the October 15, 2000 deadline.

15. *Date:* December 15, 2000.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Special Projects/ Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the November 1, 2000 deadline.

16. *Date:* December 15, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications for Collaborative Research in American Studies I, submitted to the Division of Research Programs at the September 1, 2000 deadline.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 00–30302 Filed 11–27–00; 8:45 am]

BILLING CODE 7536–01–M

Corrections

Federal Register

Vol. 65, No. 229

Tuesday, November 28, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6883-6]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

Correction

In the issue of Monday, November 13, 2000 on page 67796, in the first column, in the correction of proposed rule document 00-25929, in instruction number 1, in the first line, ''30147 '' should read ''60147 ''.

[FR Doc. C0–25929 Filed 11–27–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–363–000]

American Transmission Systems, Inc.; Notice of Filing

Correction

In notice document 00–29592 appearing on page 69755 in the issue of Monday, November 20, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–29592 Filed 11–27–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–358–000]

New York State Electric & Gas Corporation; Notice of Filing

Correction

In notice document 00–29589 appearing on page 69757 in the issue of Monday, November 20, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–29589 Filed 11–27–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43480; File Nos. SR–PHLX–00–86 and SR–PHLX–00–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the Exchange's Payment for Order Flow Fee and a Rebate for Certain Fees Incurred

Correction

In notice document 00–28224 beginning on page 66275 in the issue of Friday, November 3, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–28224 Filed 11–27–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 28, 2000

Part II

Environmental Protection Agency

40 CFR Parts 261, 266, and 268

Requirements for Zinc Fertilizers Made From Recycled Hazardous Secondary Materials; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 266, and 268

[FRL–6905–3]

RIN 2050–AE69

Requirements for Zinc Fertilizers Made From Recycled Hazardous Secondary Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to revise the existing regulations that apply to recycling of hazardous wastes to make zinc fertilizer products. This proposal would establish a more consistent regulatory framework for this practice, and establish conditions for excluding hazardous secondary materials that are used to make zinc fertilizers from the definition of solid waste under the Resource Conservation and Recovery Act (RCRA). Today's proposal also solicits comments on regulating mining wastes that are used to make fertilizers.

DATES: EPA will accept public comment on this proposed rule until February 26, 2001.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2000–RZFP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. EPA may conduct a public hearing on this proposed rule during the comment period, if there is sufficient interest on the part of commenters.

Comments may also be submitted electronically through the Internet to: *rcra-docket@epamail.epa.gov.* Comments in electronic format should also be identified by the docket number F–2000–RZFP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this proposed rulemaking, contact Dave Fagan, U.S. EPA (5301W), 1200 Pennsylvania Ave. NW., Washington, DC 20460; (703) 308–0603, or e-mail: *fagan.david@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available from the RCRA Information Center:

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The contents of today's action are listed in the following outline:

I. Statutory Authority
II. Background
A. What Is the Intent of Today's Regulatory Proposal?
B. What Is the Scope of This Proposed Rule?
C. How Is Recycling of Hazardous Wastes To Make Fertilizer Currently Regulated?
D. What Are EPA's Goals for This Rulemaking?
E. How Would Today's Proposal Affect Producers and Consumers of Zinc Fertilizer?
III. Settlement Agreement for the Phase IV Administrative Stay
IV. Detailed Description of Today's Proposal
A. Removal of Exemption for K061-Derived Fertilizers
1. Background
2. Today's Proposed Action
B. Conditional Exclusion for Recycled Zinc-Bearing Hazardous Secondary Materials
1. Background
2. Proposed Conditional Exclusion
a. Applicability of Conditional Exclusion
b. Reporting and Recordkeeping
c. Conditions to the Exclusion
i. Speculative Accumulation
ii. Conditions Applicable to Generators of Excluded Hazardous Secondary Materials
iii. Conditions Applicable to Manufacturers of Zinc Fertilizers or Zinc Fertilizer Ingredients Made From Excluded Secondary Materials
d. Alternatives Considered
e. Implementation and Enforcement Hazardous
C. Conditional Exclusion for Zinc Fertilizers Made From Excluded Hazardous Secondary Materials
1. Contaminant Limits
a. Product Specifications for Non-Nutritive Metals in Conditionally Excluded Zinc Fertilizers
b. Product Specifications for Dioxins in Conditionally Excluded Zinc Fertilizers
2. Testing and Recordkeeping
V. Mining Wastes Used To Make Fertilizer: Request for Comments
VI. Relationship With Other Regulatory Programs
VII. State Authority
A. Statutory Authority
B. Effect of Today's Proposed Rule
VIII. Administrative Assessments
A. Executive Order 12866
B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Federalism—Applicability of Executive Order 13132
F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898

I. Statutory Authority

These regulations are proposed under the authority of sections 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923 and 6924.

II. Background

A. What Is the Intent of Today's Regulatory Proposal?

Today's proposed rule is one component of the Environmental Protection Agency's ongoing assessment of contaminants in fertilizers. Prior to this proposed rulemaking the Agency studied available information on contaminants in a wide range of fertilizer products (including waste derived fertilizers), application rates for fertilizers, and how fertilizers are regulated in the United States and in foreign countries. See ''Background Document on Fertilizer Use, Contaminants and Regulation'' (EPA 747–R–98–003, January 1999). In addition, EPA developed a risk assessment of contaminants in fertilizers, which was released in August 1999. These documents are both available on EPA's website; their respective website addresses are http://www.epa.gov/opptintr/fertilizer.pdf, and http://www.epa.gov/epaoswer/hazwaste/recycle/fertiliz/risk/report.pdf.

Based on these and similar studies, such as those recently issued by the State of Washington (''Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' April 1999) and the State of California (''Development of Risk Based Concentrations for Arsenic, Cadmium and Lead in Inorganic Commercial Fertilizers,'' California Department of Food and Agriculture, March 1998), EPA has tentatively decided that the relatively small risks associated with contaminants in fertilizers do not warrant a broad new federal regulatory effort in this area (such as under the authority of the Toxic Substances Control Act). However, as part of EPA's overall assessment of the fertilizer contaminant issue, the Agency reexamined the current RCRA regulatory requirements that apply specifically to recycling of hazardous wastes to make fertilizer products. This reexamination was based on the Agency's own experience with implementing the current RCRA regulations, as well as views expressed by regulated industry, public interest groups, state regulatory officials and others (see ''EPA Stakeholder Meetings on Hazardous Waste Derived Fertilizers, November 12–13, 1998, Meeting Summaries''). From this review EPA has decided to propose certain revisions to the current regulations for hazardous waste derived fertilizers, for the following reasons:

- The RCRA standards that now apply to most hazardous waste derived fertilizers, known as the ''land disposal restrictions'' (LDR) standards, were developed based on ''best demonstrated available technology'' for treating hazardous wastes prior to disposal in hazardous waste landfills. The LDR standards were thus not developed specifically for fertilizers.[1] A number of stakeholders have argued persuasively for contaminant standards that are more appropriate and specific to fertilizers. In today's action, EPA is proposing to set new standards for fertilizer contaminants based on the levels that can be readily achieved using demonstrated manufacturing practices.
- The current regulations are inconsistent. As discussed above, hazardous waste derived fertilizers must meet the applicable RCRA LDR treatment standards before they may be used as fertilizer products. There is one exception to this requirement, however: Fertilizers made from electric arc furnace dust (also known by its RCRA waste code as K061) are specifically exempted from having to meet the LDR standards. EPA believes that the original basis for exempting K061-derived fertilizers from these standards is no longer valid (for reasons explained further in section IV.A of this preamble), and that fertilizers made from K061 should be subject to the same standards that apply to other hazardous waste derived fertilizers.
- Regulating fertilizer feedstocks as hazardous wastes creates unnecessary disincentives to legitimate and beneficial recycling practices. Currently, hazardous waste feedstocks that are used in fertilizer manufacture are subject to full hazardous waste management requirements, which include generator requirements, manifests (when such wastes are transported), and permits for manufacturers who store such materials prior to incorporation into fertilizer. However, fertilizer manufacturers and their suppliers often have strong incentives to avoid being subject to such RCRA requirements, for reasons explained later in this preamble. The net effect is that many such companies simply avoid the use of zinc-rich secondary materials to make fertilizer if they carry the label of RCRA ''hazardous waste.'' EPA believes that the regulations that govern this recycling practice should be revised so that appropriate environmental safeguards are maintained, while removing unnecessary regulatory constraints on legitimate and beneficial recycling practices.

[1] The purpose of the RCRA LDR standards is to assure that threats posed by disposal of hazardous wastes are minimized before disposal. RCRA section 3004(m). However, EPA has long acknowledged that these standards are not ideal for hazardous waste derived products used in a manner constituting disposal, but rather are the minimum needed to satisfy section 3004(m). 53 FR 17578, 17605 (May 17, 1988): see also *Association of Battery Recyclers* v. *EPA,* 208 F. 3d 1047 (D.C. Cir. 2000) (acknowledging special risks posed by uses constituting disposal justifying stricter LDR Standards).

B. What Is the Scope of This Proposed Rule?

Today's proposed regulatory amendments address only one type of fertilizer that is made from recycled hazardous wastes; specifically, zinc micronutrient fertilizer. According to the information that EPA has reviewed, zinc fertilizers account for the great majority of fertilizers that are made from recycled hazardous wastes. Another reason for limiting the scope of this proposal to zinc fertilizers is the Agency's judgment that developing recycling standards for this one type of fertilizer product should be relatively straightforward from a technical standpoint, and it may thus be possible to promulgate final rules for such products in a relatively short time frame. The Agency is aware, however, that some manufacturing of other types of fertilizers from hazardous industrial wastes may be taking place, and that regulatory revisions to address these other recycling practices may also be in order. However, developing appropriate regulations that could apply to virtually any fertilizer made from recycled hazardous wastes would be a more complex, longer-term effort. The Agency has chosen to avoid regulatory delays for zinc fertilizers by proceeding with today's limited-scope rulemaking proposal. Comment is invited on this aspect of today's proposal. EPA may address other types of hazardous waste derived fertilizers in a follow-up rulemaking. Until then, the current RCRA regulatory framework will continue to apply to recycling of hazardous wastes to make fertilizers other than zinc micronutrient fertilizers. These regulations are described in detail in following sections of this preamble.

The Agency is also aware that at least one iron fertilizer product is currently being produced from a mining waste that is exempted from hazardous waste regulation, despite evidence that the product exhibits a hazardous waste characteristic when tested according to the Toxicity Characteristic Leaching Procedure (TCLP) (Oregon Department of Environmental Quality Laboratory, Case Number 980474, July 31, 1998). Today's proposal invites comment on whether this type of waste recycling practice should be regulated under RCRA.

C. How Is Recycling of Hazardous Wastes To Make Fertilizers Currently Regulated?

EPA's longstanding policy is to encourage legitimate recycling of hazardous wastes, as a means of recovering valuable resources (for example, zinc), and lessening the need for extraction of virgin materials to make products. The Agency continues to believe that recycling of hazardous wastes in fertilizer manufacture can be (and is) a safe and beneficial practice, when proper environmental safeguards are observed.

With regard to recycling hazardous wastes to make fertilizer, current RCRA regulations place controls on the management of the hazardous wastes prior to incorporation of the waste into a fertilizer, and define when fertilizers made from recycled hazardous wastes are legitimate products. These regulatory requirements are specified in 40 CFR Part 266, Subpart C.

Under RCRA, placement of hazardous wastes on the land is generally regulated as a disposal practice, and thus the regulations that apply to this type of recycling practice are generally referred to as the ''use constituting disposal'' (UCD) regulations. Fertilizers produced from hazardous waste (i.e., incorporating hazardous wastes as one of their ingredients) are one example of a use constituting disposal. Hazardous waste derived asphalt is another example of such a product. See 63 FR at 28609–610 (May 26, 1998); *Association of Battery Recyclers*, 208 F.3d 1047 (DC Cir. 2000), upholding LDR rules applied to hazardous waste derived asphalt.

Products made from recycled hazardous wastes whose intended use involves placement on the land may create risks that are potentially higher than for other types of recycled products (actual risk potential depends, of course, on concentrations of toxic constituents in the products and a number of other factors). Regulating these products as hazardous wastes, however, would have the effect of prohibiting their use altogether. See 50 FR at 628 (January 4, 1985). Rather than prohibiting their use, current regulations require that these products meet the same treatment standards they would have to meet if they were disposed in a landfill.

In the final rule on the definition of solid waste (50 FR 614, Jan. 4, 1985), EPA asserted jurisdiction over all hazardous secondary materials, and over products that contain these wastes, when they are applied to the land. However, in the preamble to that rule, the Agency noted that we hoped eventually to develop standards or specification levels for toxic constituents in waste-derived products whose use on the land may cause substantial harm (50 FR 628). Based on the information described elsewhere in this preamble, we have decided to propose specific levels (discussed elsewhere in this preamble) at which waste-derived zinc fertilizers should be considered products, rather than wastes.

Under the current UCD regulations, hazardous wastes that are going to be recycled to make fertilizers must be managed in accordance with all applicable hazardous waste management requirements, until they are incorporated into a fertilizer. Generators of the hazardous wastes must comply with the RCRA generator requirements (see 40 CFR Part 262), off-site shipments of the wastes must be manifested (Subpart B of Part 262), and storage of these materials by fertilizer manufacturers generally requires a RCRA permit. In addition, the fertilizers produced from hazardous wastes must meet the LDR treatment standards prior to being land disposed.

The requirements for hazardous waste derived fertilizers to meet LDR treatment standards were first promulgated in the ''First Third'' LDR rule (August 17, 1988, 53 FR 31138). The standards were revised in the ''Third Third'' LDR rule, which established treatment standards for metals in characteristic hazardous wastes (June 1, 1990, 55 FR 22520). In the Third Third rule the treatment standards for hazardous waste derived fertilizers were specified as the toxicity characteristic levels (*i.e.,* the levels that identified when wastes are considered ''hazardous'' according to the TCLP). The Agency changed those standards in the ''Phase IV'' LDR rule (May 26, 1998, 63 FR 28556), which set new (and for most constituents, more stringent) treatment standards for metals in toxicity characteristic wastes.

In response to the Phase IV LDR rule, affected fertilizer manufacturers submitted information to the Agency arguing that the Phase IV standards could actually have negative environmental consequences by eliminating relatively ''clean'' zinc fertilizers from the market, and encouraging the use of fertilizers with higher levels of contaminants (*e.g.,* K061 derived fertilizers) that were not subject to the LDR standards. In response, the Agency administratively stayed the effectiveness of the Phase IV rule as it applied to zinc micronutrient fertilizers (63 FR 46332, August 31, 1998).

In that notice EPA announced its intent to address more broadly the requirements for recycling of hazardous wastes into fertilizer through a rulemaking process, as manifested by today's proposal. The effect of the Phase IV administrative stay was that the Third Third treatment standards (*i.e.,* the characteristic levels) continue to apply to zinc fertilizers made from recycled hazardous wastes. A petition for review of this part of the final Phase IV rule, which challenged the stay, was subsequently filed in the D.C. Circuit Court of Appeals by several petitioners. Further discussion of this petition and its resolution is presented in section III of this preamble.

As mentioned previously, fertilizer products made from one particular type of hazardous waste (K061, or electric arc furnace dust) are exempt from having to meet the LDR treatment standards. However, management of the K061 feedstocks prior to recycling is subject to the same hazardous waste management standards described above for other hazardous wastes used as components of fertilizers. Further discussion of the regulatory exemption for K061 derived fertilizers is contained in section IV.A. of this preamble.

D. What Are EPA's Goals for This Rulemaking?

EPA hopes to achieve the following through this rulemaking effort:

- More regulatory consistency. Today's proposal is intended to create a ''level playing field'' with regard to how the recycling of hazardous waste into zinc fertilizers is regulated. Removing the current exemption for K061 derived fertilizers is one aspect of today's proposal that should result in a more comprehensive and more consistent regulatory framework for hazardous waste derived zinc fertilizers. In this same vein, today's proposal requests comments on eliminating the current exemption from the definition of solid waste for mining wastes that exhibit a hazardous characteristic and that are used to make fertilizer products.
- Limits on contaminants in recycled zinc fertilizers that are based on

demonstrated manufacturing practices. Today's proposed limits on metals in recycled zinc fertilizers are based on levels that have been demonstrated to be technically and economically achievable by the industry, are protective of human health and the environment, and will result in overall reductions in the volumes of heavy metals that are applied to the nation's farmlands from hazardous waste derived zinc fertilizers.

• More appropriate controls on management of hazardous secondary materials used in legitimate zinc fertilizer recycling practices. Today's proposal should serve to better define ''legitimate recycling'' for zinc fertilizers, and streamline current regulatory restrictions on management of hazardous secondary materials used as feedstocks in zinc fertilizer manufacturing.

E. How Would Today's Proposal Affect Producers and Consumers of Zinc Fertilizer?

We believe that today's regulatory proposal should have very few negative impacts on fertilizer manufacturers, the waste generators who supply them, or on farmers who use zinc fertilizers. In fact, many elements of today's proposal are expected to have a positive effect on the zinc fertilizer market. However, the Agency is interested in any further information that commenters may be able to provide on such impacts, either positive or negative. A more detailed discussion of the economic impact analysis prepared in support of this rulemaking is presented in section VIII.A. of this preamble.

RCRA regulations affect only a portion of the overall zinc fertilizer industry. It is estimated that roughly one half of the total zinc fertilizer produced in the United States is made from hazardous secondary materials, such as K061, brass fume dust and other zinc oxide materials. (*Land Application of Hazardous Waste Derived Micronutruent Fertilizers*, Bay Zinc Company and Tetra Technologies, Inc.; November 19, 1999) The balance of zinc fertilizer production is made from secondary materials (or in some cases, ''virgin'' mineral concentrates) that are not hazardous wastes, and thus are not subject to RCRA controls. An example of a non-hazardous waste that is commonly used to make zinc fertilizer is zinc oxide ''skimmings,'' a by-product from galvanizing of various steel products. Manufacturers of high-purity zinc fertilizers (such as zinc sulfate monohydrate, or ZSM) typically can use either hazardous or non-hazardous secondary materials; the resultant fertilizer products are essentially identical (Ibid.).

EPA recognizes that regulating one half of the industry while the other half is essentially unregulated has the potential for creating distortions in the zinc fertilizer market. One of the Agency's concerns in this regard is that imposing stringent regulations on recycling of hazardous material feedstocks can create a strong economic incentive for manufacturers to use feedstock materials that carry no RCRA regulatory ''baggage.'' This can be detrimental environmentally, if unregulated fertilizers with higher concentrations of toxic constituents have a market advantage. This partial regulation could also lead to greater reliance on non-RCRA regulated feedstock materials from foreign sources. Ultimately, such distortions in the market would likely result in lower volumes of zinc-bearing wastes being beneficially recycled.

EPA believes that the regulatory amendments proposed today could greatly reduce these deleterious effects on the industry and its customers, and may encourage beneficial recycling by zinc fertilizer producers and their suppliers, while ensuring appropriate environmental protections.

III. Settlement Agreement for the Phase IV Administrative Stay

On December 18, 1998, a petition for review of the Phase IV administrative stay (described in Section II.C above) was filed by the Washington Toxics Coalition, the Sierra Club and the Environmental Technology Council. Since the objectives of the petitioners to ensure protection of human health and the environment are generally consistent with EPA's, and in order to avoid protracted litigation on this matter, a settlement agreement was reached on June 20, 2000, in which the Agency committed to address several issues relating to hazardous waste derived fertilizers in this rulemaking effort. In summary, in the settlement agreement the Agency agreed to:

- Sign a notice of proposed rulemaking (NPRM) by November 15, 2000;
- Propose in the NPRM:
  - —Technology-based standards for certain metal contaminants in hazardous waste derived zinc fertilizers;
  - —Elimination of the current exemption from LDR treatment standards for K061 derived zinc fertilizers;
  - —Standards for dioxins in hazardous waste derived zinc fertilizers; and
  - —Record keeping and reporting requirements.
- In the NPRM, solicit comments on a regulatory option that would establish a comprehensive reporting and record keeping system for generators, transporters and manufacturers involved with production of any fertilizer made from hazardous waste, based on the RCRA Biennial Reporting system.
- In the NPRM, solicit comment on eliminating the current exemption from Subtitle C regulation for fertilizers made from mining wastes;
- In the NPRM, discuss the option of retaining the current generator, transportation and storage requirements, if the Agency proposes to modify those requirements;
- Sign a Notice of Final Rulemaking that addresses the above provisions no later than May 15, 2002.

Today's proposed rule is consistent with the terms of this agreement. Pursuant to Administrative Procedures Act regulations, the Agency has not committed to promulgating any specific regulatory action in the final fertilizer rulemaking. The final rulemaking will reflect the comments and data submitted during the public comment period on this proposal, as well as any new analyses conducted by the Agency. A copy of the settlement agreement is included in the docket for today's proposed rule.

IV. Detailed Description of Today's Proposal

A. Removal of Exemption for K061-Derived Fertilizers

1. Background

Electric arc furnace dust, known by its RCRA waste code as K061, is a zinc-rich waste collected in air emission control baghouses and scrubbers at electric arc steel making plants. K061 was listed by EPA as a hazardous waste in 1980, due to relatively high concentrations of heavy metals such as lead, cadmium and chromium. More recent data indicate that the levels of heavy metal contaminants in K061 have generally declined, as generators have made advances in removing such contaminants from the scrap metal feedstocks used in this type of steelmaking process. However, concentrations of lead in excess of one percent (by weight) are still reported to be relatively common in K061 used by the fertilizer industry (''Land Application of Hazardous Waste Derived Micronutrient Fertilizers, Bay Zinc Company and Tetra Technologies Inc., November 19, 1999, Appendix A).

Measurable levels of dioxin contaminants have also been reported in a limited number of K061 samples: Data from the State of Washington's recent study of fertilizer contaminants (''Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' April 1999) indicated dioxin levels in one sample of raw K061 at over 800 ppt, and a sample of K061-derived fertilizers at approximately 340 ppt. Other types of zinc fertilizers that were tested showed far lower (in many cases, non-detect) levels of dioxins.

Manufacturing zinc fertilizer from K061 typically involves treating the material with sulfuric acid to form a granular zinc ''oxy-sulfate'' fertilizer product. Thus, the manufacturing process does not involve any processing to remove heavy metal contaminants. K061 fertilizers are only partially soluble in water, since much of the zinc remains in an oxide or ferrite (a zinc-iron compound) form, which is less water soluble than zinc sulfate. Recent trends in the zinc fertilizer industry indicate a shift away from K061 oxy-sulfate products, and increased production of zinc sulfate monohydrate (ZSM) products, which typically have much lower levels of heavy metal contaminants (Ibid). Further discussion of zinc fertilizer manufacturing processes, and ZSM fertilizer products in particular, is presented in section IV.B. of today's preamble.

It should be noted that K061 can be processed thermally (*e.g.*, in multiple hearth furnaces) to reclaim iron and produce a zinc oxide material that is amenable to further processing to manufacture high-purity zinc fertilizer such as ZSM. Although this is not yet a widespread practice, it further illustrates that the purity of zinc fertilizer is largely a function of how feedstock materials are processed, rather than the type of feedstock itself.

In 1988, as part of the ''First Third'' land disposal restrictions final rule, EPA exempted fertilizers made from K061 from having to meet the LDR treatment standards applicable to other types of hazardous waste derived fertilizers. EPA's decision to promulgate this exemption was based on an analysis of then-available data that indicated heavy metal contaminant levels in K061-derived fertilizer were comparable to (and in some cases were lower than) contaminant levels in zinc fertilizers made from non-hazardous waste feedstocks. Thus, it was concluded that eliminating K061 fertilizers from the market (as would have been likely absent the regulatory exemption) would not have had any net environmental benefit. EPA also concluded at that time that, based on available information, agricultural application of K061 fertilizers did not appear to pose significant risks for either ground water or food chain contamination pathways (*see* 53 FR 31164, August 17, 1988).

2. Today's Proposed Action

Today's proposed rule would amend the current regulations at § 266.20, by removing the provision that exempts fertilizers made from K061 from having to meet applicable land disposal restrictions standards. In effect, this proposal would require all zinc fertilizers made from recycled hazardous secondary materials to meet the same set of contaminant standards. This aspect of today's proposal is in accord with the Agency's objective of creating a more consistent regulatory framework for this particular recycling practice.

EPA's rationale for eliminating the current regulatory exemption for K061 derived fertilizers also rests on the fact that the composition of zinc fertilizers on the market has changed significantly since the exemption was granted in 1988. Current data on zinc fertilizer composition clearly indicate that levels of certain heavy metal contaminants in K061 fertilizers are considerably higher than those in other types of zinc fertilizers that are now widely marketed. For example, total concentrations of lead in K061 fertilizers commonly exceed one percent (10,000 mg/kg) by weight, while available data suggest that lead levels in zinc sulfate monohydrate fertilizers (which are also widely marketed) rarely exceed 100 mg/kg in dry product (see, for example, ''Land Application of Hazardous Waste Derived Micronutrient Fertilizers,'' Bay Zinc Company and Tetra Technologies, Inc., November 19, 1999).

Such higher purity zinc fertilizers were not widely available as substitutes for K061-derived fertilizers in 1988. Today's proposal to eliminate the exemption for K061 derived fertilizers has also been made in consideration of the levels of dioxins in K061 fertilizers that were identified in the State of Washington's report ''Screening Survey of Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' (April 1999).

As discussed further in Section VII.A. of this preamble and in the Regulatory Impact Analysis (RIA) prepared in support of today's proposal, EPA believes that subjecting K061 zinc fertilizers to the same regulatory controls as other types of hazardous waste derived fertilizers will have the benefit of creating a more consistent regulatory framework for this type of zinc fertilizer manufacturing, and will not create undue hardships for the zinc fertilizer industry.

At the present time EPA is aware of only one manufacturer (Frit Industries of Ozark, AL) currently using K061 to produce zinc oxy-sulfate fertilizer. Although this company would need to modify its manufacturing practices to comply with this regulatory change, EPA believes that this should not cause undue economic hardship for either the company or for zinc fertilizer consumers. In any case, we do not believe that it is sensible to exempt this type of fertilizer from having to meet contaminant limits, while other zinc fertilizers of greater purity would be required to meet them. In addition, the provisions in today's proposal that would streamline regulatory controls on management of hazardous feedstocks in zinc fertilizer manufacture should benefit the industry by increasing the availability of alternative hazardous feedstock materials (*e.g.*, brass foundry dusts).

Some stakeholders have advocated a total ban on the use of K061 to make zinc fertilizer, largely because of concerns about measured concentrations of dioxin contaminants in two samples of these fertilizers, which were analyzed as part of the State of Washington's previously cited screening study. The Agency considered this option, but is not proposing it. EPA believes that K061 can be a suitable feedstock for manufacturing zinc fertilizer, provided that it is processed sufficiently to address metal and dioxin contaminants. In fact, at least one steel manufacturer in the United States is currently thermally processing K061 to recover its iron content and to produce a zinc oxide material that can be further refined to make high-quality zinc fertilizer (Illinois Pollution Control Board, AS99–3, May 5, 1999). The Agency does not believe that there is any environmental reason to discourage recycling of K061 to make fertilizer; in fact, we hope that this rulemaking may serve to encourage beneficial metals recovery from K061 that might otherwise be landfilled.

In summary, given the relatively high contaminant levels in K061 fertilizers, and the availability to the industry of alternative hazardous waste (and other) feedstock materials, EPA sees no compelling reason to continue subjecting K061 fertilizers to less stringent regulatory controls than other types of hazardous waste derived zinc fertilizers. The Agency requests comment on this provision of today's proposal.

B. Conditional Exclusion for Recycled Zinc-Bearing Hazardous Secondary Materials

1. Background

a. *General.* As discussed in Section II.C. of this preamble, the ''use constituting disposal'' (UCD) requirements of § 266.20 currently apply to management of any RCRA hazardous waste that is recycled to make fertilizer. This in effect requires the wastes to be managed according to all applicable hazardous waste regulations, including requirements for generation, transportation and storage of the wastes prior to recycling. The recycling processes themselves are generally not subject to RCRA regulation.

EPA's rationale for regulating these materials as hazardous wastes is that the end disposition of the waste closely resembles uncontrolled land disposal, which is the classic type of discard under RCRA. (January 4, 1985, 50 FR at 627–28; August 17, 1988, 53 FR at 31198). At the time these regulations were promulgated, however, EPA was unsure as to how to regulate the end disposition of the waste-derived products, since full Subtitle C regulation would essentially prohibit their use as products (January 4, 1985; 50 FR at 646). The original regulatory scheme consequently applied RCRA Subtitle C regulation only to persons generating, transporting and storing hazardous wastes before they were incorporated into the waste-derived products. Id. At 646–47. As explained earlier, because the use of waste-derived products on the land is a type of land disposal, EPA in 1988 amended these regulations to require all such waste-derived products (with the exception of K061 derived fertilizers) to meet LDR treatment standards [2].

As mentioned previously, zinc fertilizers can be manufactured from a variety of different feedstock materials—some are ''virgin'' materials such as refined ores, while others are secondary materials generated from emission control devices or other industrial processes. While their origins may differ, the physical and chemical characteristics of these materials are generally quite similar—for the most part they are dry, powdery solid materials containing a high percentage of zinc in oxide or chloride form, along with lower levels of non-nutritive contaminants such as lead, cadmium and other heavy metals. The zinc content of these materials typically ranges from 50% to 80% by weight.

Levels of metal contaminants in these feedstocks vary considerably, even from batch to batch; on average, contaminant levels in non-hazardous feedstocks are slightly lower than those in hazardous feedstocks. Levels of lead (for example) in non-hazardous galvanizer ash typically range between one and two percent, while levels in hazardous brass foundry dust can be as high as six percent (letter from George M. Obeldobel, March 6, 2000). As a general matter, however, we believe that any potential risks posed by hazardous and non-hazardous zinc feedstock materials would be substantially similar, which argues for more consistent regulation of these materials under RCRA.

In EPA's view, more consistent regulation of zinc fertilizer feedstocks is also appropriate since the current regulatory structure tends to discourage legitimate and beneficial recycling of those materials that are now classified as hazardous wastes. As mentioned previously, the current UCD regulations that apply to this recycling practice were originally promulgated in 1985. A thorough, prospective examination of the potential impacts of the UCD regulations specifically on the zinc fertilizer industry was beyond the scope of that original rulemaking.

Since 1985 the Agency has gained considerable insight as to how the UCD regulations have affected manufacturers of zinc fertilizers and their suppliers. Based on this experience with implementing the UCD requirements, EPA has concluded that the existing UCD regulatory structure unnecessarily constrains legitimate recycling in the zinc fertilizer industry, as discussed in more detail below.

Under the current regulations, companies that use hazardous wastes to make fertilizers typically will need a RCRA permit for storage of the material prior to recycling. This can have important implications for zinc fertilizer manufacturers. Obtaining a RCRA permit can be costly and time consuming. In addition, a RCRA permit carries with it other obligations, such as the requirement for facility-wide corrective action, which can incur further substantial costs. Most companies (and fertilizer manufacturers are no exception) thus have a strong incentive to avoid the RCRA permit requirement for their facilities whenever possible.

One way for a zinc fertilizer manufacturer to avoid the RCRA permit requirement is to simply use non-hazardous feedstock materials. These materials are generally more expensive than hazardous waste feedstocks, which increases the price of zinc fertilizer products. For manufacturers who do accept hazardous feedstock materials, the RCRA permit requirement can also be avoided by selling the end product for purposes other than fertilizer. ZSM, for example, can also be used as an animal feed supplement, which does not trigger the UCD regulatory requirements. This creates the anomalous situation in which a manufacturer of ZSM would be subject to full regulation under RCRA if the product is sold as fertilizer, but is not regulated at all if the identical product is sold as animal feed. EPA does not believe that there is a convincing environmental rationale for perpetuating this somewhat artificial regulatory distinction between zinc products that trigger the UCD requirements and those that do not, particularly when the composition of the products may be identical.

The current UCD regulations create similar disincentives for generators of hazardous zinc secondary materials. Such generators typically prefer not to have such materials classified as hazardous waste, since they are then less valuable as a commodity, are subject to stringent hazardous waste management requirements, and in many states are assessed hazardous waste generation fees. These generators therefore tend to avoid selling their material to companies that make fertilizer products. However, fertilizer is by far the largest market for ZSM. Since this market is effectively closed for many generators, and alternative recycling options are limited, generators of zinc-bearing secondary materials can often be forced to dispose of the material as hazardous waste, rather than sell it to fertilizer manufacturers. In EPA's view, such distortions in the market for recyclable hazardous secondary materials are both environmentally and economically non-productive.

b. *Reporting and Recordkeeping.* As discussed above, under current regulations hazardous wastes that are used to make fertilizers are subject to the RCRA ''cradle to grave'' requirements for tracking and recordkeeping prior to being recycled. The following is a summary of these requirements:

- Generators of such hazardous wastes must:
—Manifest off-site shipments of hazardous waste (§ 262.20–23);
—Submit exception reports for any unconfirmed deliveries of waste shipments (§ 262.42);

[2] EPA is reciting this history as an aid to readers; EPA is not accepting comment on these past determinations; or otherwise reopening these issues.

—Maintain copies of manifests, exception reports, biennial reports and any data used to make hazardous waste determinations, for at least three years (§ 262.40); and
—Submit a biennial report describing all hazardous wastes generated and the facilities they were shipped to every other year (§ 262.41).

- Manufacturers of hazardous waste derived fertilizers must:
—Maintain copies of manifests for at least three years [§ 264.71(b)(5)];
—Submit a report for each shipment of hazardous waste received without a manifest (§ 264.76) and each shipment with significant manifest discrepancies (§ 264.72); and
—Submit a biennial report for each odd-numbered year describing all hazardous wastes received from any off-site generators, and who the generators were.

These RCRA requirements were designed to be a ''cradle to grave'' tracking system, to document and ensure that hazardous wastes shipped from a generator's facility actually arrive at their intended destination (*e.g.,* a hazardous waste disposal facility), and do not become ''lost'' or dumped indiscriminately. The biennial reporting requirement is intended to provide information to the public on hazardous waste generation and movement, and to enable EPA to report to Congress with national profiles of these activities. While these requirements apply when the recycled end product is subject to the UCD regulations, such cradle-to-grave requirements generally do not apply if such wastes are used to make other types of products. Thus, the RCRA tracking system does not apply to many hazardous waste streams that are recycled but are exempt or excluded from regulation because the end products are not used on the land.

With regard to monitoring and tracking hazardous wastes that are used to make fertilizers (and other recycled products), the current RCRA regulations have certain limitations. For example, hazardous waste generators who supply fertilizer manufacturers are not required to notify regulatory agencies of the practice, so identifying the sources of hazardous waste feedstock materials involves reviewing individual manifests, which are typically maintained at the fertilizer manufacturer's facility. Tracking such waste movements may be especially difficult in cases where there is a middleman (*e.g.,* a waste broker or processor) involved, who may aggregate or blend wastes from various sources before shipping them to a fertilizer manufacturer.

In addition, generators are required to identify only the facility to which their wastes are shipped, but do not need to identify what their wastes may be used for. Many facilities that receive such wastes make a variety of products in addition to fertilizers, which makes it difficult for regulators (and others) to determine whether or not a particular waste shipment was used specifically for fertilizer manufacture. The biennial reporting system has similar limitations for much the same reasons, and in addition only applies to hazardous waste management activities that occur every other year.

In summary, the existing regulatory framework provides regulators and others with only limited means of identifying and monitoring generators who supply manufacturers of hazardous waste derived fertilizers, or what they are supplying. Furthermore, the current biennial reporting system is admittedly only marginally useful for identifying at an aggregate national level who is engaged in these practices, what wastes are being used, or what products are being produced. EPA believes that the current recordkeeping, reporting and tracking system (as it applies to recycling of hazardous wastes in zinc fertilizers) can be streamlined and greatly improved with relatively minor modifications.

To this end, EPA is today proposing (as discussed below) a new set of reporting and recordkeeping requirements specifically for this industry that should enhance oversight capabilities of regulatory agencies, and provide more complete, more accurate and more accessible information to regulators and others on this particular type of hazardous waste recycling. In addition, as discussed in section VIII.C. of this preamble, we believe that the proposed new requirements would actually result in less overall paperwork burden on industry than the current system. EPA requests comments on whether the new set of reporting and recordkeeping requirements in today's proposal is necessary, and on the potential impacts of such requirements.

2. Proposed Conditional Exclusion

EPA is today proposing in § 261.4(a)(20) a conditional exclusion from the definition of solid waste for hazardous secondary materials—that is, spent materials, sludges and byproducts—that are recycled to make zinc fertilizers or zinc fertilizer ingredients. We believe excluding these materials from being classified as wastes is appropriate, for the reasons outlined above. However, we do not believe that a total exclusion (which would allow unrestricted management of these materials) is appropriate, given the Agency's recent experience with at least three cases of environmental damage caused by improper management of such materials by zinc product manufacturers (these cases are discussed further in the economic impact analysis prepared for this proposed rule).

As mentioned previously, these materials are typically dry zinc oxide dusts that contain significant levels of non-nutritive metals such as lead, cadmium and arsenic, often in soluble form. They are thus susceptible to wind and water dispersion if not managed properly. The damage cases that the Agency has dealt with have primarily involved situations where the secondary material feedstocks and/or wastes generated from fertilizer manufacturing processes have been stored outdoors, usually in uncovered, unlined piles. These cases have resulted in contamination of soils, sediments and ground water via uncontrolled dispersal, a form of ''throwing away'' inconsistent with the notion that these zinc-containing materials were valuable feedstocks (''Report of RCRA Compliance Inspection at American Microtrace Corporation,'' US EPA Region VII, December 4, 1996). In summary, today's proposal would replace the current Subtitle C regulatory controls on these materials with conditions designed to ensure that the unprocessed materials do not become discarded.

EPA is not aware of any damage cases that may have occurred from mismanagement of hazardous waste derived zinc fertilizers themselves. EPA requests information on any other proven damage cases due to mismanagement of secondary material feedstocks and/or wastes generated from fertilizer manufacturing processes, or proven damage cases involving mismanagement of hazardous waste derived zinc fertilizers.

a. *Applicability of Conditional Exclusion.* The conditional exclusion proposed today would be an exclusion only from the RCRA Subtitle C regulations, and not from the emergency, remediation and information-gathering sections of the RCRA statute (sections 3004(u), 3007, 3013, and 7003). This restates the principle already codified for other excluded secondary materials—that the exclusion is only from RCRA regulatory provisions, and not from these statutory authorities. See section 261.1(b).

EPA is repeating that principle here in the interests of clarity, not to reopen the issue. The legal basis for the distinction of the Agency's authority under these provisions is that they use the broader statutory definition of solid waste (and hazardous waste as well) and so need not (and should not) be read as being limited by the regulatory definition. *See,* for example, 50 FR 627; January 4, 1985.

b. *Reporting and Recordkeeping.* Today's proposed rule includes conditions for reporting and recordkeeping by generators and manufacturers that are designed to ensure that government oversight over the handlers of excluded materials (*e.g.,* generators and manufacturers) is not compromised. These conditions would replace the current hazardous waste regulatory requirements for reporting and recordkeeping. As discussed below, the proposed conditions are in fact designed to improve the accountability system, and government oversight capabilities, over the handling of secondary materials used to make zinc fertilizers.

Today's proposal would replace the existing tracking system with a set of reporting and recordkeeping requirements (*i.e.,* conditions to the exclusion) to specifically identify zinc fertilizer manufacturers who receive excluded hazardous secondary materials and the generators who supply them, to track shipments of these materials, and to provide a much more detailed accounting of the types and volumes of hazardous secondary materials that are actually used to make zinc fertilizer products. The proposal also specifies recordkeeping requirements for finished zinc fertilizer products that are made from excluded materials, as discussed below in section IV.C.2.

The proposed conditions on reporting and recordkeeping are not expected to impose substantial new paperwork burdens on affected companies, since we believe they rely primarily on standard business record keeping practices. At the same time, however, it should be understood that the proposed requirements would be unique, in that no other RCRA-regulated recycling practice is subject to such an expanded, industry-specific accountability system. EPA solicits comments on whether such an accountability system is warranted, whether it would necessitate substantial changes to current business practices, and on any other potential impacts of such a system.

c. *Conditions of the Exclusion.*

i. *Speculative Accumulation.* Today's proposal would prohibit speculative accumulation (as defined in existing § 261.1(c)(8)), which generally requires an annual recycling rate of 75% of all hazardous secondary materials accumulated as of the first day of each calendar year. This proposed provision is mainly for emphasis and clarity; a general provision classifying secondary materials accumulated speculatively as solid wastes already appears at § 261.2(c)(4). See generally 50 FR at 634–37; January 4, 1985.

ii. *Conditions Applicable to Generators of Excluded Hazardous Secondary Materials.*

Overview. As discussed above, under today's proposal generators would no longer be subject to current hazardous waste management regulations, provided that the generator met the specified conditions relating to accumulation, storage, transportation, reporting and recordkeeping of excluded materials. The following is a general, simplified reiteration of how requirements for generators would change under these proposed rules, followed by a more detailed explanation of each of the proposed conditions.

Accumulation/Generation. Currently, generators of hazardous wastes used to make zinc fertilizers may accumulate the wastes on-site for no more than 90 days without triggering the need for a RCRA permit. In addition, a number of states levy fees on all such generated wastes, which are typically based on the volumes generated in a given year. Under today's proposal, these requirements would no longer apply to generators (unless a state chose to adopt more stringent requirements).

Storage. On-site storage (*e.g.,* in tanks or containers) of hazardous waste accumulations is currently allowed if the generator meets the management requirements for such units at interim status facilities. Under today's proposal, these storage requirements would be replaced by a set of more general, performance-based conditions intended to ensure that excluded materials are stored safely at generator facilities.

Transportation. Off-site shipments of hazardous wastes (e.g., from a generator to a fertilizer manufacturer) currently must be manifested according to the requirements of 40 CFR Part 262, Subparts B and C. These requirements include provisions for packaging, labeling, marking, and placarding of waste shipments, as well as procedural requirements such as those for dealing with manifest discrepancies. Under today's proposal hazardous waste manifests and the requirements associated with their use would not apply. The generator would, however, need to document shipments of excluded materials and maintain copies of shipping papers, analogous to the current manifesting requirements.

Reporting and Recordkeeping. Under current regulations, generators of hazardous wastes used to make zinc fertilizers must provide notice to the authorized agency of their hazardous waste management activity (§ 262.12), submit biennial report information every other year (§ 262.41), and maintain manifest records for at least three years (§ 262.40). These requirements would no longer apply under today's proposal. Instead, generators would need to: (a) Submit a one-time notice of their intent to manage (now excluded) materials according to the proposed conditions; and (b) maintain shipping records (containing information analogous to that in manifests) for at least three years.

The following is a more detailed explanation of today's proposed conditions for generators.

Storage. Under today's proposal (§ 261.4(a)(20)(ii)(A)), storage of excluded hazardous secondary materials at a generator's facility would, as a condition of the exclusion, only be allowed in tanks, containers or in buildings. These units would have to be constructed and maintained in a way intended to prevent releases of the material into the environment from occurring. This is in effect a general performance standard for such units, coupled with a few broad design conditions.

EPA expects that in most cases generators will choose to store their feedstock materials inside buildings, either in bulk (i.e., in piles) or in ''supersack'' containers. Supersacks are reusable woven resin bags that can contain approximately one ton of dry material, and are typically handled with forklifts, cranes or other heavy machinery. As mentioned previously, the damage cases known to the Agency that involved hazardous zinc feedstock materials have all resulted from outside storage, typically in uncovered, unlined piles. Storage of these materials inside well-designed and maintained buildings should adequately prevent against releases of such materials into the environment. Thus, the proposed storage condition is that any such building be engineered to have a floor, walls and a roof made of non-earthen materials, such that dispersal or contact by rainwater are prevented. These buildings may, however, have doors or removable sections to enable access by trucks or machinery.

Excluded secondary materials could also be stored in tanks that are not located inside buildings. Such tanks are often used for receiving shipments of

bulk material from trucks or rail cars. A tank (as defined in § 260.10) subject to this exclusion would have to be structurally sound, and have a roof or cover that prevents wind or water dispersal.

Outside storage of secondary materials in containers at generating facilities would also be allowed, with some restrictions. Such containers would have to have lids or covers to prevent dispersal of the contents, and be constructed of metal or other rigid materials. This last requirement is intended to prevent the use of supersacks or similar types of containers for outside storage. This is because supersacks are to some extent porous, and do not have sealed openings. They are not waterproof or airtight, and can rupture if mishandled. EPA believes that this type of container does not offer secure enough storage under outside conditions, and so is proposing not to allow their use for outdoor storage of excluded materials.

EPA believes that the proposed conditions on storage of excluded hazardous secondary materials at generator facilities would be protective of human health and the environment. However, we recognize that the proposed conditions do not address every possible circumstance that could lead to releases of these materials at a generator's facility. The same can be said, of course, for permitted hazardous waste management facilities. An example might be an accident during loading or unloading of material that causes spillage or wind dispersal, and (at least potentially) contamination of soils. In all cases, unless the owner/operator of the facility responds immediately to clean up the released material, these situations would be considered an act of discard under RCRA. Such materials would then be considered waste (i.e., the conditional exclusion would not longer apply), and the owner/operator would potentially be subject to enforcement action for illegal disposal of hazardous waste. EPA invites comment on all aspects of today's proposed storage requirements for generators.

One-time notification. The proposed rule would require generators of excluded hazardous secondary materials to submit a one-time notice (§ 261.(4)(a)(20)(ii)(B)) to the EPA Regional Administrator (or the state Director in an authorized state) identifying the name, location and EPA ID number of the generating facility, and the type (e.g., brass foundry dust) and estimated annual volume of material that is expected to be excluded under these fertilizer recycling regulations. This condition is intended to enable regulatory agencies to readily identify the generators who supply (or intend to supply) excluded secondary materials to zinc fertilizer producers. If the generator anticipates shipping excluded materials off-site, the generator would also have to certify in the notice that he will only ship excluded materials to states that are authorized to administer these regulations (*i.e.,* if that state were not authorized, the material would not be excluded in that state and would have to be managed as hazardous waste in that state).

With regard to off-site shipments, the DOT requirements for transportation of hazardous materials (which generally involve proper identification of such materials in case of emergency incidents) could potentially apply. The shipments would not be subject to RCRA manifest requirements (since the materials would not be hazardous wastes), although similar shipping papers would be required for tracking purposes, as discussed below.

This proposed reporting requirement is generally analogous to the current requirement for generators of excluded secondary materials that are placed on the land (see § 268.7(a)(7)), which requires the generator to place a similar one-time notice in the generator facility's on-site files. However, the proposed requirement should have the effect of enhancing regulatory agencies' tracking and oversight capabilities, since the information would be submitted directly to the overseeing agency, rather than being maintained in the facility's files.

EPA considered alternatives to this one-time notice requirement, such as requiring periodic (*e.g.,* yearly, or once every five years) notices, or a new notice whenever a significant change occurs, such as process changes that could change the product's composition. The one-time notice is consistent, however, with similar conditional exclusions (*e.g.,* for comparable fuels—see § 261.38(c)(1)(i)(A)), and it is not clear that additional notices from generators would be necessary for regulatory oversight purposes. We solicit comment on the need for a one-time notice to the regulating agency, as well as the content and frequency of this reporting condition.

Recordkeeping. Today's proposal would require generators to maintain records of all shipments of excluded hazardous secondary materials for a minimum of three years. These proposed recordkeeping conditions should enable regulatory agencies to more easily investigate shipments of excluded materials for compliance and enforcement purposes. We believe that these recordkeeping conditions should be generally consistent with normal business recordkeeping practices, and thus would not be expected to impose significant additional paperwork burdens on generators. We invite comment on this issue.

As specified in § 261.4(a)(20)(ii)(C), these records would have to identify for each shipment the name of the transporter, date of the shipment, the quantity shipped and a brief description of the excluded material in the shipment, name and location of the fertilizer manufacturer who received the shipment, a notice to the receiving manufacturer that the shipped materials are subject to the conditions specified in this rule, and documentation confirming receipt of the shipment by the manufacturer. These conditions are analogous to the current requirements for shipping hazardous wastes under manifests and maintenance of manifest records. Copies of manifests are typically kept at the generator's facility, though some states require copies of manifests to be submitted to the state agency.

The proposed recordkeeping conditions would require generators of excluded hazardous secondary materials to verify that each off-site shipment of excluded material was received as intended at the destination fertilizer manufacturing facility. This is intended to ensure a clear, documented chain of custody between the generator and the fertilizer manufacturer. In addition, under the proposed conditions generators would need to provide for each shipment a notice to the receiving manufacturer that the material is a hazardous secondary material excluded from hazardous waste regulations only as long as certain conditions are met. This is intended to ensure that manufacturers are fully aware of the regulatory status of each shipment of material, the obligations associated with receiving it, and the consequences of failing to meet the exclusion conditions.

These conditions may have particular implications for generators who ship their wastes to or through middlemen, such as waste brokers or transfer facilities. The conditions are not intended to prevent this practice—the use of a middleman to facilitate shipments from generator to fertilizer manufacturer would be allowed, provided that the manufacturer receives the same wastes that the generator shipped. If excluded wastes were to be mixed with other materials, all of the mixed materials would need to be managed in accordance with the exclusion conditions (or in accordance

with Subtitle C requirements, if they were mixed with hazardous wastes).

Other issues could arise with regard to shipments of material through middlemen. For example, a generator of zinc fume dust might send secondary material to a treatment facility that recovers lead, with the treated material then sent to a manufacturer of zinc micronutrient fertilizer. As explained below, under today's proposal the intermediate processor in this scenario would be considered a manufacturer of fertilizer ingredients, and would need to meet the conditions applicable to manufacturers in order to maintain the excluded status of the secondary material. If the processed secondary material was still hazardous after the intermediate processing (*i.e.,* if it exhibited a hazardous characteristic, or if it would be considered a listed hazardous waste were it not excluded), the processor would be considered both a manufacturer and a generator, and would need to meet both sets of conditions in order to maintain the material's excluded status. If the processor rendered the material non-hazardous, however, the conditions for generators would not apply to the processor, since there would be no need to further exclude the material.

Although we believe that a clear chain of custody between generator and fertilizer manufacturer is important to maintaining the integrity and effectiveness of today's conditional exclusion, we recognize that the conditions described above could have consequences for generators and other entities that we have not yet fully evaluated. For example, it is possible that some intermediate handlers could blend excluded hazardous secondary materials with other bulk materials before they are shipped to a fertilizer manufacturer. In such a case the blended material would all be subject to the conditions in today's proposal in order to maintain the excluded status of the material. This could create problems for the intermediate handler (and perhaps the manufacturer) in accurately tracking the shipments of excluded materials and maintaining the excluded status of all such blended materials. We therefore invite comment on this aspect of today's proposal having to do with intermediate processors, as well as on the other proposed conditions (described above) that generators would have to comply with to maintain the excluded status of their secondary materials.

iii. *Conditions Applicable to Manufacturers of Zinc Fertilizers and Zinc Fertilizer Ingredients Made From Excluded Hazardous Secondary Materials.* Today's proposal specifies certain conditions that manufacturers of zinc fertilizers and zinc fertilizer ingredients would need to meet in order for hazardous secondary materials that they handle at their facilities to be excluded from regulation as hazardous wastes. The following is a general, simplified discussion of how requirements for fertilizer manufacturers would change under these proposed rules, followed by a more detailed explanation of each proposed condition.

Permits. Currently, zinc fertilizer manufacturers typically need RCRA permits for storage of hazardous wastes prior to recycling. Under today's proposal, a manufacturer would not be subject to RCRA permitting requirements, provided that the manufacturer met the proposed conditions.

Storage. Manufacturers who are subject to RCRA permit requirements under the current regulations need to comply with specific requirements for storage (*e.g.,* in tanks or containers) at permitted facilities. Under today's proposal, these storage requirements would not apply; storage of excluded hazardous secondary materials prior to recycling would instead need to be conducted according to the more general, performance-based conditions proposed today.

Transportation. Manufacturers must now comply with manifest requirements for shipments of hazardous wastes from off-site, including procedural requirements and those pertaining to retention of manifest records. Under today's proposal, these transportation requirements would be replaced with less prescriptive conditions for documenting and maintaining records of shipments of excluded materials.

Reporting and Recordkeeping. Under current regulations, manufacturers of hazardous waste derived fertilizers must: (a) Submit a notice of waste management activity and obtain an ID number (§ 262.11); (b) submit a one-time notice and certification relating to compliance with land disposal restrictions (LDRs) standards (§ 268.7); (c) notify the authorized agency of each shipment of product made from recycled hazardous waste (§ 268.7(b)(6)); and (d) submit biennial report information (§ 264.75).

Under today's proposal the manufacturer would instead need to: (a) submit a one-time notice to the authorized agency; (b) maintain shipping records; and (c) Submit an annual report of recycling activity to the authorized agency.

Applicability of conditional exclusion. The proposed conditions would apply to both manufacturers of finished zinc fertilizer products, as well as manufacturers of chemicals or materials that are in turn used as ingredients in zinc fertilizers. The distinction between fertilizer manufacturers and those who manufacture fertilizer ingredients may in this context be important for some companies. In some cases, zinc refiners or zinc metal producers that are not in the business of making fertilizers may manufacture chemicals (*e.g.,* ZSM) that are then sold to fertilizer manufacturers as ingredients. Such producers are currently subject to the UCD regulations in the same way as zinc fertilizer manufacturers, since they make a product from hazardous waste that ultimately is used on the land. Similarly, some facilities may process or reclaim hazardous secondary materials (*e.g.,* K061) to make them amenable for recycling into zinc fertilizers; these would also be considered manufacturing facilities for the purpose of this conditional exclusion. Note that if the same processed or reclaimed materials are used for other purposes than to make zinc fertilizer, the conditional exclusion would not apply (and would probably not be needed unless the materials are used for some other purpose subject to UCD regulatory requirements).

In the situations described above involving manufacturers of zinc fertilizer ingredients, it is possible that in some cases the manufacturer of the ingredient may sell the product to another company, unaware that it will be used to make fertilizer. We believe that such cases will be rare, given the relatively small size of the industry and the limited number of uses for such zinc products. We invite comment, however, as to how common this scenario might be and what impacts today's proposed regulations might have on business transactions such as these.

For the reasons outlined above, EPA believes today's proposal should extend to manufacturers of zinc fertilizer ingredients, as well as to manufacturers of finished fertilizer products. We invite comment on this aspect of the proposed rule, including the need for such a provision, as well as information on which companies or facilities might be affected by such a provision, and any implementation issues that might occur as a result.

Storage. Under today's proposal, manufacturers of zinc fertilizers or ingredients would need to meet the same storage requirements for excluded hazardous secondary materials that

would apply to the generators of such materials (described above), as a condition of the exclusion. Again, the general intent of these storage conditions is to ensure that the materials are managed securely at fertilizer manufacturing facilities, and that releases of the materials into the environment are avoided. EPA solicits comments on the need for and approach to these proposed storage conditions, and specifically whether additional conditions (*e.g.,* controls on fugitive dust emissions from production buildings) may be necessary to ensure adequate protections.

One-time notification. As a condition of the exclusion, manufacturers would also need to submit a one-time notice to the authorized agency that identifies the name and location of the manufacturing facility, and estimated annual quantities and types (*e.g.,* generating industrial processes) of excluded materials that are expected to be used in zinc fertilizer production. The intent of this one-time notice is to provide regulators with general knowledge of which manufacturers intend to make use of the conditional exemption, as well as background information on the nature and scale of their intended recycling operations. This notice would in effect replace and streamline the current notification requirements for hazardous waste recyclers who make products used in a manner constituting disposal, as specified in § 268.7(b)(6).

Under those requirements manufacturers of hazardous waste derived fertilizers must submit to the overseeing agency an LDR certification statement (*see* § 268.7(b)(4)), and certain other information relating to compliance with LDR treatment standards, for each shipment of fertilizer products. While we believe that it is reasonable and desirable for regulatory agencies to be informed as to which companies are making zinc fertilizer from excluded secondary materials and what materials they intend to use, we do not believe that it is necessary to require reporting on every shipment of fertilizer products, especially in light of the proposed annual reporting requirement for manufacturers (see following discussion).

EPA considered alternatives to this proposed one-time notice requirement, similar to the alternatives described above for the proposed one-time notice requirement for generators. We solicit comment on the need for a one-time notice to the regulating agency, as well as the content and frequency of this reporting requirement.

Recordkeeping. Under today's proposal manufacturers would need to retain for a minimum of three years records of all shipments of excluded hazardous secondary materials that were received by the zinc fertilizer manufacturer during that period (§ 261.4(a)(20)(iii)(C)). These records would need to include information identifying the names and addresses of the generators and transporters of excluded wastes received by the manufacturer, the date each shipment was received, and information on the types and quantities of excluded materials in each received shipment. This recordkeeping condition is also intended to enhance the capability of regulatory agencies to (when necessary) account for shipments of excluded secondary materials. We believe that the condition is consistent with standard business practices, and thus should not be burdensome to fertilizer manufacturers. We request comment as to whether such a recordkeeping provision is needed, on the impacts of such a requirement, and on the alternatives that might be available.

Annual report. Under proposed § 261.4(a)(20)(iii)(D), each zinc fertilizer manufacturer who uses excluded hazardous secondary materials would need to submit to the appropriate regulatory agency an annual report that identifies the types, quantities and origins of all such excluded materials that were received by the manufacturer in the preceding year. This would also be a new type of report, intended to ensure an adequate tracking and accountability system for these excluded materials. EPA requests comment on this proposed condition, particularly with regard to whether such a requirement is necessary, and/or whether additional information (*e.g.,* material composition data) should be required.

d. Alternatives Considered. EPA considered several regulatory approaches as alternatives to the conditional exclusion approach outlined in today's proposed rule. For each of the alternatives, EPA is interested in the views of potentially regulated entities and the public regarding the costs, benefits and other impacts of such alternatives. The following is a description of the alternatives considered:

• *Maintain current regulatory structure.* EPA considered retaining the current UCD regulatory approach for zinc fertilizer recycling, as an alternative to today's proposed conditional exclusion. As explained previously, under the current regulations hazardous secondary materials that are recycled to make zinc fertilizer are considered hazardous wastes, and thus must be managed in accordance with all applicable RCRA Subtitle C regulations. Note that under this regulatory option the LDR standards for product contaminants could be retained, or other product contaminant limits (such as those proposed today) could be applied, in which case the limits would be regulatory standards, rather than conditions for exclusion.

The main advantage of retaining Subtitle C controls over these materials prior to recycling into zinc fertilizer is presumably the greater certainty that they will be managed properly. The RCRA permit requirement for off-site storage (*i.e.,* at the manufacturing facility) additionally imposes facility-wide corrective action obligations on the owner/operators of such facilities.

EPA believes that the disadvantages of retaining the current UCD regulatory structure for zinc fertilizer recycling outweigh the potential advantages. The Agency is persuaded that the current UCD regulations have created unnecessary impediments to safe and legitimate recycling, as discussed previously in this preamble. We also believe that the conditional exclusion proposed today would be protective and would result in greater volumes of hazardous secondary materials legitimately and beneficially recycled into valuable products. It must be remembered that encouraging ''properly conducted recycling and reuse'' is a statutory objective. RCRA section 1003(a)(5).[3] Further, today's proposal is expected to enhance government oversight capabilities over these practices through more complete reporting and recordkeeping by generators and fertilizer manufacturers.

EPA requests comment on the alternative of retaining the current UCD regulatory structure for hazardous wastes that are used to make zinc fertilizers.

• *Maintain current UCD requirements, with additional reporting, recordkeeping and testing requirements for all hazardous waste derived fertilizers.* Under this option the current UCD regulatory framework would be retained (*i.e.,* management of hazardous waste fertilizer feedstocks prior to

[3] This objective is tempered by the specific goals that such properly conducted recycling is expected to achieve: increased waste minimization and decreased land disposal. It could be argued that because these fertilizers are placed on the land (land disposal under section 3004(k)), the policy of encouraging this type of recycling carries less weight. Nonetheless, EPA believes the conditional exclusion approach available to both secondary material generators and fertilizer manufacturers will encourage safe and legitimate use of these zinc-containing secondary materials, and that this result is therefore in keeping with RCRA's recycling goals.

recycling would be subject to RCRA regulation), the K061 exemption would be removed, and today's proposed fertilizer contaminant limits would apply. More importantly, under this regulatory alternative, expanded biennial reporting requirements (*see* § 262.41) would be required for all manufacturers of hazardous waste derived fertilizers (not just zinc fertilizer manufacturers), and the hazardous waste generators that supply them. The main objective of such expanded requirements would be to collect much more detailed information on zinc fertilizer recycling practices, and provide greater public access (as well as access by regulatory agencies) to that information. The following is an outline of the expanded biennial reporting requirements that would be required:

1. *Applicability.* Generators of hazardous wastes being sent to fertilizer manufacturers, waste brokers and receivers [*i.e.,* hazardous waste treatment, storage or disposal (TSD) facility owner/operators] who use hazardous wastes to make fertilizers would be subject to the enhanced reporting, recordkeeping and testing requirements.

2. *General reporting requirements.* Generators and facility owner/operators who are currently required to submit biennial reports (*see* § 262.41) would be required to submit additional information in those reports, in electronic format (consistent with electronic reporting procedures that are currently being developed by EPA). Such information would include (asterisk indicates items already required):

—EPA ID Number *
—Company Name *
—Street Address *
—Mailing Address
—City, State, Zip *
—County
—Tax ID
—Contact Name and Title and Telephone #, ext.*
—Dunn and Bradstreet Number
—Industry SIC Codes * (one code for the overall production of the site and one code for the specific industrial process that generated the waste)
—Parent Company Name
—Parent Company Dunn and Bradstreet Number
—Latitude and Longitude
—Regulatory Status (under what laws reports are made)

3. *Additional requirements for generators (only):*

—Type of waste (waste code) and amount of total hazardous waste generated and shipped for use in fertilizer manufacture. If the waste is made into fertilizer on-site by the same company, this information would be reported under the ''receiver'' section. If the facility does not know how much might be used for fertilizer (*e.g.,* if they send it to a waste broker) they would have to report the total amount shipped that could be made into fertilizer.
—EPA ID # of facility waste is shipped to —Chemical specific information (CAS code):
—Chemical composition data for shipped wastes, including data on concentrations as well as the total weight of each contaminant in each shipment of waste (see testing requirements)

4. *Additional requirements for receivers (only):*

—Type (waste code) and amount of hazardous waste received from any source (*i.e.,* including waste brokers) for use as fertilizer, and amount that was actually used to manufacture fertilizer.
—EPA ID # of waste generator facility
—Total amount of fertilizer produced from hazardous waste
—Chemical specific information (CAS code):
—Chemical composition data for hazardous waste received, and for finished fertilizer products made from hazardous wastes (see testing requirements)
—Fertilizer specific information: Brand name, guaranteed analysis, type of fertilizer, batch number and date received.

5. *Testing requirements.* Chemical analyses would have to be performed by the generator and the facility owner/operator on the types and amounts of chemicals in hazardous wastes before they are made into fertilizers, as well as the finished fertilizer products. Chemicals to be tested for would include: arsenic, beryllium, cadmium, cobalt, chromium-6, lead, manganese, molybdenum, zinc, boron, antimony, barium, nickel, copper, aluminum, iron, selenium, sodium, silver, magnesium, strontium, thallium, titanium, vanadium, cyanide, chloride, benzene, toluene, xylene, styrene, ethylene glycol, phenol, aldehydes (formaldehyde), vinyl chloride, chlorinated hydrocarbons (including trichloroethylene, perchlorethylene, 1,1,1 trichloroethane, methylene chloride, and chloroform), phthalates, dioxins and furans, PACs, PCBs, hexachlorobenzene, radioactivity, fluoride, and ketones.

6. *Data management.* The data would be accessible to the public in hard copy form and maintained in a searchable database accessible through the EPA Web Site. This database would also need to be accessible and available in electronic form (*i.e.,* on diskette or CD).

7. *Labeling.* Labels (*i.e.,* on consumer product packaging) or product disclosure documents (*i.e.,* for farmers) would identify that the fertilizer is made from hazardous waste. The labels and documents would also identify the chemical composition of the fertilizer, including concentrations of plant nutrient chemicals and regulated contaminants.

EPA requests comment on this regulatory alternative. Specifically, EPA is interested in the views of affected entities and the public on the need for, potential impacts of, and incremental benefits of each requirement in this alternative compared with the other options discussed in the preamble.

• *Exclusion without conditions.* EPA also considered the option of simply excluding from the definition of solid waste hazardous secondary materials that are recycled to make zinc fertilizer. Recycling such materials to make zinc fertilizer would then be regulated the same as recycling them to make other types of zinc products, such as animal feed or zinc metal for galvanizing. This option would not include regulatory contaminant limits for fertilizers, since other recycled zinc products do not have such limits.

One rationale for this regulatory option would be that hazardous wastes used to make zinc fertilizers do not need to be regulated under RCRA Subtitle C, since they have commodity value and are essentially the same as alternative, non-hazardous feedstock materials. It could be further argued that restrictions on managing hazardous feedstock materials are unnecessary, since the original concern behind the UCD regulations had more to do with uncontrolled use of contaminated products on the land than management of feedstock materials prior to recycling.

EPA does not prefer this regulatory option, for several reasons. Damage cases involving mismanagement of hazardous zinc fertilizer feedstocks are evidence of the need for some system of controls over these materials. In addition, eliminating all reporting, recordkeeping or storage requirements would compromise the ability of regulatory agencies (and others) to monitor these recycling practices. EPA does not believe that eliminating virtually all controls and accountability over hazardous waste fertilizer feedstocks would serve the public's (and regulators') interest in ensuring proper management of these materials. These

factors argue convincingly, in our opinion, for maintaining enforceable conditions over hazardous secondary materials prior to recycling into fertilizers. Nevertheless, we request comments on this alternative, including information on tradeoffs between the level of regulation and the potential for risks.

e. *Implementation and Enforcement.*

Implementation. If finalized, today's proposed conditional exclusion for hazardous secondary materials could have important implications for facilities that are currently in this business and are subject to the UCD hazardous waste regulatory requirements. As a general matter, once the regulatory changes become effective and facilities begin complying with the exclusion conditions, the affected activities of those facilities (some facilities might be managing hazardous wastes that are not affected by this rule) would no longer be subject to hazardous waste management regulations.

Under this proposal, a RCRA-permitted facility that is now managing hazardous waste, but which under the new rules would be managing only excluded hazardous secondary materials, would not be required to maintain the operating portion of its permit, since it would no longer be engaged in hazardous waste management. In these cases the permit should be modified to reflect the changes in the facility's hazardous waste management operations. The type of modification necessary will depend upon facility-specific circumstances, as described below.

For permitted facilities that manage excluded secondary materials in addition to regulated hazardous wastes, changes to the facility's permit would be relatively minor. These facilities would still need operating permits—only those units used solely to manage excluded materials would be relieved of permitting requirements. In this case, the facility owner/operator might seek a permit modification to remove the formerly subject unit(s) from the permit.

As mentioned above, a permitted facility that would no longer be considered a hazardous waste management facility (*e.g.,* a facility that now managed only excluded hazardous secondary materials) would no longer need a hazardous waste operating permit. However, where such a facility has not yet completed facility-wide corrective action (see 40 CFR 264.101), the obligation to conduct such cleanup continues. Therefore, one approach would be to modify the permit to remove the requirements applicable to hazardous waste storage, but not to eliminate the corrective action portion of the facility's permit. In such a case, the facility would thereafter have a corrective action-only-permit that would expire only when facility-wide corrective action is determined to be complete.

A similar situation could occur in the case of permits that have long-term ''post-closure'' requirements for monitoring or remediating groundwater contamination from RCRA-regulated units such as landfills. In cases like these the authorized agency would also have the option of eliminating only the provisions of the permit relating to the affected storage units holding excluded materials at the facility, while leaving in effect the permit conditions for post-closure care.

EPA recognizes that there may be practical issues associated with transitioning a RCRA-permitted facility to a facility that no longer would be subject to hazardous waste regulations under the provisions of today's conditional exclusion. One issue in particular could be that the terms of the facility's permit (a legally enforceable document) would technically remain in effect until the authorized agency took action to modify or terminate the permit. Such permit conditions could include unit-specific requirements (*e.g.,* design, operating and closure requirements for storage tanks), as well as general facility requirements such as financial assurance, security and personnel training. This could potentially put the owner/operator (and the authorized agency) in the awkward situation of being subject to two sets of overlapping and inconsistent regulatory requirements, that is, the hazardous waste permit requirements and the conditions of today's proposed rule.

Current RCRA regulations do not provide an explicit mechanism for automatically eliminating permit conditions in these situations. We expect that such situations would be temporary and relatively rare, and an authorized agency should be able to deal with them in a common-sense manner, without legal difficulties. It is possible, however, that some problems could arise under some circumstances. EPA is therefore considering (and solicits comment on) whether a more explicit regulatory provision is necessary to address these potential transition issues.

One approach to more explicitly deal with this issue might involve amending the current permit requirements in 40 CFR Part 270 to specify that permit conditions pertaining to any active hazardous waste management activity at a facility in this type of situation would automatically be eliminated, without the need for any action on the part of the authorized agency. Such a regulatory amendment would not relieve owner/operators of permit obligations that do not pertain to active hazardous waste management in the unit in question, such as corrective action requirements. Alternatively, permit termination could be accomplished through the Class I permit modification process (§ 270.42(a)).

A facility that is operating under RCRA interim status would be affected by promulgation of today's proposed rule in much the same way as permitted facilities, and the issue of corrective action would be addressed in a similar manner. In this case, Part 265 interim status standards that apply to the affected unit and the general facility standards would be moot and no longer in effect. Under RCRA regulations, however, cessation of hazardous waste operations alone does not eliminate a facility's interim status. See 40 CFR 270.73. A facility that wishes to no longer be in ''interim status'' could seek a denial of its pending permit application. Since the Agency believes it appropriate to ensure that corrective action is addressed prior to denying a permit under these circumstances, we would expect to grant the denial only when we concluded that corrective action obligations have been satisfied [4].

In addition to the above described issues relating to permits and corrective action, today's proposed rule may also have implications with regard to closure of hazardous waste storage units at affected facilities. If today's rule were finalized, wastes currently managed as hazardous wastes would no longer be so classified as long as the facility complies with the proposed exclusion conditions. Such a conditional exemption could be read as triggering the existing closure requirements, since owners/operators of non-land based hazardous waste units (e.g., tanks, containers, containment buildings) must begin closure within 90 days of receiving the unit's final volume of hazardous wastes. 40 CFR 264.113(a) and 265.113(a).

[4] EPA notes that, in a recent **Federal Register** preamble, the Agency may have implied that RCRA section 3008(h) authority ceases whenever a facility's application for a permit has been denied. *See*, 63 FR 56712 & 56716 (October 22, 1998). The Agency, however, did not intend by that notice to opine on the scope of the Agency's authority under section 3008(h). The statements reflect the Agency's general practice of ensuring that any necessary corrective action has been completed prior to denying a permit application. Where cleanup has been completed prior to permit denial, further action under section 3008(h) is obviously unnecessary.

EPA is concerned that requiring closure of units in these situations would serve little environmental purpose since, after closure, the unit would be immediately reopened and be used to store the same (now excluded) material. It should also be noted that, under today's proposal, units storing excluded materials would be considered essentially the same as similar units used to store products. Thus, we do not believe that requiring these particular units to close through RCRA Subtitle C procedures is necessary to protect human health and the environment.

For these reasons, EPA is considering an explicit regulatory exemption from RCRA closure requirements for units that store hazardous wastes that subsequently become conditionally excluded under this rule. EPA's closure regulations fit into the broader RCRA hazardous waste ''cradle-to-grave'' management system by minimizing or eliminating potential threats to human health and the environment and the need for future corrective action at the site after active hazardous waste management activities cease. *See* 52 FR 8712, 8713. The Agency is today proposing that hazardous secondary materials do not warrant classification as hazardous waste when managed in compliance with the specified conditions of today's rule, and that storage units containing excluded materials do not warrant regulation under the closure standards when they cease storing hazardous wastes. We therefore request comment as to whether a more explicit regulatory exemption from RCRA closure requirements may be appropriate for units that once stored hazardous wastes but now store only conditionally excluded materials.

Another option would be to treat such units comparably to those at generator facilities that cease managing hazardous wastes. When this occurs such storage units are subject to unit-specific removal and decontamination standards (40 CFR 262.34(a)). Under this option, a hazardous waste storage unit that subsequently is used to store only excluded material would have to meet the removal and decontamination standards at the point when the unit no longer is used to manage excluded materials. EPA does not favor this approach, however, since we do not believe it necessary or appropriate for such RCRA regulatory requirements to remain in effect (for what could be a long period of time) after such a unit ceases managing hazardous wastes. In addition, any concerns about hazardous waste spills and contamination from these units would be dealt with through corrective action requirements. Therefore, EPA is not proposing this approach.

Finally, EPA is also considering revising the ''delay of closure'' rules, set forth at 40 CFR 265.133(d) and (e), to allow units storing only conditionally exempt wastes to postpone closure until the unit is taken out of service. Such an approach would involve certain procedural steps built into the delay-of-closure rule, but it would avoid triggering closure for units that are managing now conditionally exempt waste, while at the same time requiring that such units eventually undergo formal RCRA closure under Subtitle C. EPA questions the need for this approach, however, especially since the delay of closure regulations are based on the assumption that hazardous waste remains in the closing unit, which is not the case here.

EPA requests comment on all of the implementation issues described above.

Enforcement. With regard to generators and fertilizer manufacturers who would be interested in making use of the conditional exclusion provisions of today's proposed rule, it should be understood that failure to meet one or more of the conditions specified in the rule could have serious consequences. Each condition must be met in order to maintain the excluded status of the hazardous secondary materials used to make zinc fertilizers. Thus, failure to meet any of the conditions would have the effect of removing the exclusion, and the secondary materials would be considered hazardous wastes subject to regulation under RCRA Subtitle C. If, for example, a fertilizer manufacturer failed to store hazardous secondary materials according to the conditions in the rule, the manufacturer could be required to obtain a RCRA permit, and begin managing the waste materials according to applicable hazardous waste regulations. As a general matter, if a facility's conditional exclusion were to be revoked under circumstances like these such an action would typically not affect the excluded status of the material before it was received at the manufacturer's facility. In other words, in the above example the generator of the material would typically be allowed to retain the excluded status of the material at the generating facility, provided that the generator continued to meet the applicable conditions.

An owner/operator of a generating or manufacturing facility who chooses to use the exclusion would need to be able to demonstrate to the appropriate regulatory agency that the conditions are being met. Thus, for the purpose of clarity, proposed § 261.4(a)(21)(iv) specifies that in an enforcement action the facility owner/operators claiming the exclusion would bear the burden of proof with regard to demonstrating conformance with the conditions specified in the rule.

It should be noted that for fertilizer manufacturers the proposed exclusions in today's rule would apply only to the secondary materials being recycled and to the finished fertilizer products. Manufacturers (or intermediate processors) would not be relieved of the existing obligation to make a hazardous waste determination for all wastes generated from the fertilizer manufacturing process. Under current regulations, any such wastes that exhibit a hazardous waste characteristic would have to be managed in accordance with all applicable hazardous waste regulations.

EPA requests comment on these enforcement issues.

C. Conditional Exclusion for Zinc Fertilizers Made From Hazardous Wastes or Excluded Hazardous Secondary Materials

As mentioned previously, under current regulations manufacturers of zinc fertilizers made from recycled hazardous wastes must comply with the following requirements for the manufactured fertilizer products: (a) The fertilizer must meet the applicable LDR treatment standards before they may be used (§ 268.40), and (b) notice of each shipment of product must be submitted to the authorized agency (§ 268.7(b)(6)). Under today's proposal manufacturers would need to: (a) meet the proposed technology-based contaminant limits, and (b) maintain analytical data and analyses demonstrating compliance with the limits. The following is a more detailed discussion of today's proposed conditions.

1. Contaminant Limits

As discussed previously in this preamble, the current regulations require fertilizers made from recycled hazardous wastes to meet the LDR treatment standards applicable to the hazardous wastes which they contain. This applies to hazardous waste-derived products made from characteristic hazardous waste, even if the product no longer exhibits a hazardous waste characteristic. *Chemical Waste Management* v. *EPA,* 976 F.2d2, 12–14. The LDR standards also apply to fertilizers made from listed hazardous wastes, with the exception of those made from K061, as discussed elsewhere in this preamble. Under today's proposal, these LDR treatment

standards would be replaced with a new set of product specification contaminant limits for metals and dioxins. These contaminant limits would apply to zinc fertilizer products in their ''pure'' or manufactured form; in other words, before they are blended with other types of fertilizers prior to application. Thus, compliance with the standards could not be achieved simply by diluting a conditionally excluded zinc fertilizer with other products, such as primary nutrient (nitrogen, phosphorous or potassium) fertilizers.

It should also be noted that the proposed product specification limits would apply to manufacturers of zinc fertilizer products, but would not apply to manufacturers of fertilizer ingredients. The reason for this is that ingredient manufacturers who use excluded hazardous secondary materials would likely not be able to control the content of the end product that is sold as fertilizer. We believe that meeting the proposed product specifications should be the responsibility of the product manufacturer; requiring manufacturers of fertilizer ingredients to meet the specification limits would likely be duplicative and unnecessary. We understand, however, that in some cases fertilizer ''manufacturers'' may buy ZSM (or other zinc compounds) in bulk from zinc chemical suppliers, and simply package it and market it as fertilizer. In these situations it might make sense to require the company that actually manufactured the product to demonstrate compliance with the proposed exclusion conditions. We invite comment on this issue.

a. *Product Specifications for Non-Nutritive Metals in Conditionally Excluded Zinc Fertilizers.* Today's proposal would establish product specifications (*i.e.,* contaminant concentration limits) for non-nutritive metals as a condition for excluding from the RCRA definition of solid waste zinc fertilizers that are made from excluded hazardous secondary materials. The proposed specifications are based on contaminant levels that have been demonstrated to be technically (and economically) achievable, that will reduce the volumes of heavy metals applied to agricultural lands from these products, and that are protective of human health and the environment. The approach used to develop these proposed contaminant limits is described in detail below.

The proposed standards for metal constituents in conditionally excluded zinc fertilizers are:

Metal constituent	Maximum allowable total concentration in fertilizer, per unit (1%) of zinc (ppm)[5]
Lead	2.8
Cadmium	1.4
Arsenic	0.6
Mercury	0.3
Nickel	1.4
Chromium	0.6

[5] A zinc unit in this context represents one percent (by weight) of zinc in the fertilizer product that is applied to the land. Thus, for example, an excluded fertilizer containing 10% zinc could contain no more than 28 ppm of lead.

These contaminant limits are expressed as total concentrations of the metal in the zinc fertilizer product. This is in contrast to the current LDR standards, which are expressed as levels in a leachate extract, using the ''toxicity characteristic leaching procedure (TCLP).'' See 63 FR at 28609 (May 26, 1998) (noting that total concentration limits are often the more appropriate measure for minimizing threats posed by uses constituting disposal, in light of exposure pathways other than leaching to groundwater); *Association of Battery Recyclers* v. *EPA,* 208 F.3d, 1047, D.C. Circuit 2000 (noting special risks posed by use constituting disposal situations). We believe that establishing these limits as total concentrations, rather than as concentrations in leachate, is more appropriate for the purpose of today's rulemaking.

For wastes containing hazardous metal constituents, compliance with LDR standards typically requires adding some type of stabilizing material to the waste (such as concrete), thereby reducing the leachability of the metal contaminants once the waste is disposed in a landfill. Stabilization is obviously an impractical way to limit contaminants in zinc fertilizers, since the zinc content of the fertilizer would also be stabilized, and thus would be useless as fertilizer. In addition, the TCLP was intended to simulate the fate and transport of hazardous constituents in a municipal landfill, a scenario quite unlike fertilizer application to agricultural land. For these reasons, the Agency believes that standards for total concentrations of contaminants in fertilizers are more appropriate for this rule than standards based on a leachate test. Comments are solicited on this aspect of today's proposal.

The product specifications in today's proposal specify maximum allowable concentrations in conditionally excluded zinc fertilizer for six metals: lead, cadmium, arsenic, mercury, nickel, and chromium. Although the Agency considered setting standards for other metals (*e.g.,* selenium, beryllium and vanadium), we did not have sufficient data on levels of such metals in ZSM fertilizers to establish numerical standards for them, nor are we aware of evidence of such metals in any appreciable amounts in zinc fertilizers. The Agency solicits additional data on metals concentrations in ZSM fertilizers, including metals for which we are not proposing standards, and on the associated risks that such metals pose in fertilizers under typical application scenarios.

At this time, we believe that establishing standards for the six metals listed above should be sufficient for the purpose of this rulemaking. Several recent studies report that the primary metals of concern for fertilizers are lead, cadmium and arsenic. In fact, a recent screening study done by the State of California concluded that only those three metals are found in fertilizer products at levels that merit regulation under California law. (''Development of Risk Based Concentrations for Arsenic, Cadmium and Lead in Inorganic Commercial Fertilizers''; California Department of Food and Agriculture, March 1998). Today's proposal addresses the three additional metals generally because they were specifically highlighted in the settlement agreement discussed earlier in this preamble. In any case, because of the chemical purification processes that are used to manufacture ZSM, it is highly likely that fertilizers which meet the specifications for lead, cadmium and arsenic would also meet the specifications for these additional metals, without the need for additional processing.

Since the current RCRA standards for metal contaminants in fertilizers are expressed as concentrations in leachate (measured according to the TCLP), and today's proposed constituent limits are expressed as total concentrations in the fertilizer product, comparing the two sets of limits with regard to their ''stringency'' is not entirely straightforward. The main reason for this is that, using the TCLP, not all of the metals in a given test sample are actually extracted or leached, especially those that are relatively non-soluble. Perhaps the simplest way to compare the numbers, however, is to assume that 100% of the metals in a TCLP sample become dissolved in the tested leachate. Since the acidic test medium used in the TCLP dilutes the concentration of the metals by a factor of twenty, the maximum total concentration of metals

in a given sample can be assumed to be twenty times the TCLP leachate concentration.

Thus, under the assumption that 100% of the metals are leached, the maximum contaminant level for a toxic metal in fertilizer would be twenty times the toxicity characteristic limit. For lead, for example, this would be 100 ppm (5 ppm × 20) total concentration. In reality, of course, the concentration of lead in an actual tested fertilizer sample would likely be considerably higher than 100 ppm, since it is likely that not all of the lead in the sample would leach. The following is a comparison of today's proposed conditional limits for metals in 35.5% zinc fertilizer (the typical zinc content of most dry ZSM fertilizers [6]), and the highest levels that would be allowed under the current regulations using this very conservative approach to comparing leachate levels to total concentration levels [7].

Metal	Proposed exclusion levels (35.5% zinc), mg/kg dry wt.	20 × TCLP limit, mg/kg dry weight
Arsenic	21.3	100.0
Cadmium	49.7	20.0
Chromium	21.3	100.0
Lead	99.4	100.0
Mercury	10.7	4.0
Nickel	49.7	([1])

[1] No limit.

Using this simplistic comparison method, most of the proposed exclusion levels are at or below the maximum levels allowed by the current regulations. The proposed levels for cadmium and mercury exceed the worst-case TCLP standards, but are well within the same order of magnitude, and could be lower than what is actually allowed under the current standards, depending on the leachability of the metals in the tested fertilizers. Thus, EPA considers the exclusion levels proposed today to be more stringent than the existing standards, for the purpose of state authorization (see discussion in Section VII of this preamble). EPA requests comments on the incremental benefits to having more stringent standards, as well as the costs of such an approach. Note that fertilizer manufacturers would always have the opportunity to continue using current standards.

The proposed product specifications are expressed as concentrations of metals in product, per unit of zinc. In this case one unit of zinc equals one percent. The primary reason for expressing the standards in this way is that the zinc content of fertilizers varies widely. If the standards were not tied to the percentage of zinc in the product, fertilizers with low zinc content could much more easily comply with the standards due to the dilution effect of the other materials in the fertilizer. EPA requests comments on the relative merits of basing exclusion levels on zinc concentrations versus the total product content.

For reasons explained below, the Agency has decided to base today's proposed product specifications for metals in conditionally excluded zinc fertilizers on the levels that have been demonstrated as technically (and economically) achievable in ZSM fertilizers. See § 261.38 (specifications for toxic constituents in fuels based on levels in commercial fossil fuels). ZSM is a common, commercially available product manufactured by several companies in the United States and elsewhere. It can be made from hazardous waste feedstocks, as well as a variety of non-hazardous raw material or secondary material feedstocks. ZSM fertilizers are marketed in solid (granular or powdered) form or in a liquid solution. Since zinc fertilizer is applied sparingly to agricultural land (*i.e.,* a few pounds per acre per year), it is almost always blended with other fertilizers before application, either by manufacturers or in the field by fertilizer applicators. It should be noted that ZSM is also widely used as an animal feed supplement, and can be used as an ingredient in a variety of consumer products as well.

In recent years there has been a marked increase in manufacturing capacity of ZSM fertilizers, combined with a downward trend in production of oxy-sulfates made from K061 and other materials. For example, one major manufacturer (Bay Zinc of Moxee, WA), citing changing market conditions, recently changed its manufacturing process to begin producing a line of ZSM products, and is phasing out its production of other types of zinc fertilizers. The manufacturing process for ZSM involves a series of chemical purification steps that remove the great majority of non-nutritive metals. This is generally not the case for other types of zinc fertilizers, such as oxy-sulfates made from recycled K061. Thus, the concentrations of non-nutritive metals in ZSM are typically much lower than in other types of zinc fertilizers. To illustrate, several manufacturers guarantee a lead content in ZSM fertilizers (35.5% zinc content) of less than 50 ppm, while lead concentrations in K061-derived fertilizers (which often have lower zinc content) are often above 10,000 ppm.

The proposed concentration limits for metals in conditionally excluded zinc fertilizers are based on the Agency's analysis of ZSM contaminant data from a number of different sources, and represent products marketed at the time of sampling by at least nine different companies. The concentration limits were calculated to include a small margin to account for variabilities in the manufacturing process. A summary of available data on contaminant levels in ZSM products is included in the record for today's proposal.

By basing today's product specifications on contaminant levels that can be routinely and reliably achieved in ZSM fertilizer products, the Agency in effect is using a technology-based approach to setting specifications for these products. The proposed specifications are not intended to represent the very lowest levels of contaminants that could technically be achieved. Rather, they are intended as a reasonable measure of fertilizer product quality from both a commercial and environmental standpoint. It is entirely possible that some manufacturers could achieve significantly lower levels than those proposed today—for example, the average lead levels in ZSM (35.5% zinc) made by at least two different manufacturers typically do not exceed 10 ppm, while the proposed standard would be approximately 100 ppm of lead. For the purpose of this rulemaking, however, the Agency does not believe that it is necessary from an environmental perspective to set standards based on the very lowest levels that may technically be achieved. We do not believe that levels below those proposed would result in any significant gain in environmental protection. In addition, establishing more stringent standards for metal contaminants could force some manufacturers to make substantial additional investments to ensure that the standards were met. As discussed further in section VIII.A of this preamble, this could result in unnecessary dislocations in the zinc fertilizer market, and could raise the prices that farmers must pay for zinc fertilizer, with virtually no commensurate environmental benefit.

EPA also acknowledges the possibility that the proposed product specifications

[6] Other zinc fertilizers have lower zinc contents and would, therefore, have proportionally lower exclusion levels.

[7] Note that the exclusion levels listed in the table would be lower for a fertilizer that contained less than 35.5% zinc. For example, the limit for lead in a 20% zinc fertilizer would be 56 ppm (*i.e.,* 2.8 × 20).

for metal contaminants may not sufficiently account for process variabilities, and could thus be unnecessarily stringent. The proposed specifications were based on a qualitative assessment of the variability of contaminant levels in ZSM fertilizers; for each metal the specification was set at slightly above the ''high end'' range of concentration levels, based on available data. For example, the distribution of lead levels in ZSM (35.5% zinc) indicates that most samples contained well below 50 ppm lead, with a few samples in the 80 to 90 ppm range. The proposed specification for lead in such products would be approximately 100 ppm, to account for such variabilities.

Some ZSM manufacturers have argued that significantly higher limits (*e.g.,* 500 ppm lead) should be established to account for these variabilities (''Land Application of Hazardous Waste Derived Micronutrient Fertilizer,'' Bay Zinc Company and Tetra Technologies, Inc., November 19, 1999). The Agency solicits comment (and supporting data) as to whether the proposed product specification limits for metals are unnecessarily stringent, and what alternative contaminant concentration limits may be more appropriate for this rulemaking.

Alternatives Considered. The Agency examined several different approaches to setting limits on metals in conditionally excluded zinc fertilizers. These included: (a) Developing new risk-based limits specifically for fertilizers; (b) using the EPA standards for biosolids applied to agricultural land under section 405 (d) of the Clean Water Act (codified at 40 CFR Part 503); (c) using the proposed standards for contaminants in cement kiln dust used as a liming agent; (d) using the Canadian fertilizer standards; and (e) developing contaminant limits based on background soil concentrations. These alternatives are discussed in more detail below.

• *Risk-based standards.* Risk assessment is a tool often used by the Agency to set standards aimed at limiting the adverse effects of chemicals that are (or may potentially be) introduced into the environment. One benefit of such an approach is that it is subject to a rigorous peer review process. However, risk assessments to support regulatory standard setting can be time and resource intensive.

As mentioned in Section II.A of this preamble, in response to public concerns about possible risks from contaminants in fertilizers, EPA developed a risk assessment for contaminants in a wide range of different types of fertilizers. This assessment was released in August, 1999. A major finding of that assessment was that, with a few exceptions, the contaminant levels found in fertilizer products are not expected to cause risks of concern. However, this risk assessment was not intended to support development of risk-based fertilizer standards, and there are a number of uncertainties in the analysis that would need to be addressed if it were to withstand the rigorous technical scrutiny involved in supporting national regulatory standards. For this proposed rule the Agency has chosen not to conduct the additional data gathering and analyses that would be needed to augment the fertilizer risk assessment in this way, given the time and resources that would be required to complete such an effort. Moreover, we do not think it necessary, given the conclusion from several different analyses (see section II.A. of this preamble) that hazardous contaminants in fertilizers generally do not pose unacceptable risks to human health and the environment, even at relatively high rates of application.[8]

EPA believes that risk-based contaminant limits for this rulemaking could potentially allow substantially higher levels of contaminants in excluded zinc fertilizers than are currently found in such fertlizers. To illustrate, proposed guidelines recently considered by the Association of American Plant Food Control Officials (AAPFCO), which have since been withdrawn, specified risk-based limits for toxic metals in fertilizers that would have allowed, for example, up to 26,000 ppm lead in zinc (35.5%) fertilizer (draft SUIP #25, AAPFCO, January 2000). In contrast, levels of lead in ZSM fertilizers rarely exceed 100 ppm. For the purpose of this proposed rulemaking, EPA does not believe that regulatory standards for fertilizers should allow higher risk-based contaminant levels in these products over current levels, when much lower standards can be easily achieved by ZSM fertilizers. EPA requests comment on this issue.

[8] It is possible, of course, that excessively high rates of fertilizer application could result in risks of concern. We do not believe, however, that this is a realistic scenario, since zinc fertilizers are purchased as a commodity, and that is thus a strong incentive not to overuse such products. A massive over-application of such fertilizers could in some circumstances be considered a type of ''sham recycling'' since it could be inferred that such use is more akin to disposal than beneficial use of fertilizer. See *Marine Shale Processors* v. *U.S.,* 81 F 3d 1371, 1381–83 (5th Cir. 1996) (sham recycling when material is used in excess of what is needed, or where hazardous constituents are present in concentrations unrelated to ostensible recycling purpose).

• *EPA standards for biosolids used in agriculture.* The Agency also considered using the standards that have been established by EPA for contaminants in biosolids (*e.g.,* sewage sludge) that are applied to agricultural land (58 FR 9248). Consistent with the discussion above, the use of such risk-based standards for this rulemaking could theoretically allow zinc fertilizers to have much higher levels of metal contaminants than are currently found in most, if not all zinc fertilizers currently on the market. As discussed further below, EPA believes that the § 503 standards are fully protective of human health and the environment as they apply to biosolids applied to the land. However, for the reasons outlined in the preceding discussion of risk-based standards, EPA believes that the technology-based standards proposed today are more appropriate than the § 503 standards for the purpose of this rulemaking. EPA requests comment on this issue.

There are also a number of technical reasons as to why standards for metal contaminants developed for land-applied biosolids are inappropriate for commercial fertilizers. Biosolids and commercial or manmade fertilizers are fundamentally different materials. The key difference between these two materials is organic matter content. Fertilizers can be classified into one of two categories: organic or inorganic. Biosolids are organic fertilizers, composed of biodegradable organic matter from waste products of living organisms or decay products of once living organisms. Most commercial fertilizers are inorganic. Inorganic fertilizers are derived from non-living sources and are essentially devoid of organic matter content. Organic and inorganic fertilizers exhibit different physical and chemical properties. Consequently, they effect the fate and mobility of chemical constituents (especially metals) in different ways.

In general, biosolids exhibit greater metals adsorption capacity than inorganic fertilizers because organic matter provides reactive sites that bind metals. This binding capacity limits metals mobility in the fertilized soil and makes metals less available for uptake by plants. Organic binding sites are absent in inorganic fertilizers. Therefore, metals applied as a component of inorganic fertilizers tend to be more mobile and more readily taken up by plants. Organic and inorganic fertilizers also differ in chemical composition. Both contain varying levels of metals (*e.g.,* As, Cd, Pb) and agricultural nutrients (*e.g.,* phosphate, nitrogen). However,

biosolids also contain hydrous metal oxides which tend to bind metals and further increase the capacity of biosolids to limit metals mobility. In addition, biosolids are usually applied at much higher rates than fertilizers. Given the significant difference in composition and use between these materials, EPA believes that the pollutant loading limits established for biosolids are inappropriate for use as health based standards for inorganic fertilizers. EPA requests comment on this issue.

• *Proposed standards for contaminants in cement kiln dust used in agriculture.* On August 20, 1999 EPA proposed standards for management of cement kiln dust, or CKD (64 FR 45631). CKD can be used as a substitute for agricultural lime to maintain proper soil pH for crop production, and is typically applied at a rate of several tons per acre. The proposal included limits on four metal contaminants (thallium, lead, arsenic and cadmium) in CKD that is applied to agricultural land. These contaminant limits were based on a risk assessment conducted in support of the proposed rule.

CKD is typically used agriculturally only under certain types of agronomic conditions. Thus, EPA's risk assessment evaluated risks from applying CKD only to acidic, sandy loam soils in a limited number of geographic areas and for a limited number of crop types. In contrast, zinc fertilizers are applied to a wide variety of different soil types to supply nutrient to many different types of crops in virtually every area of the country. Because of these limitations, EPA believes that the proposed CKD standards are not appropriate for establishing contaminant limits for metals in zinc fertilizers. In addition, the Agency has received numerous comments on the CKD risk assessment that have not yet been thoroughly evaluated, and that analysis has not yet been revised to reflect those comments. Until these uncertainties are resolved, we do not think it would be appropriate to propose in today's rule contaminant limits based on the CKD proposal. We invite comment on this regulatory option.

• *Canadian standards.* EPA examined the option of using the Canadian fertilizer standards for this rulemaking (''Standards for Metals in Fertilizers and Supplements,'' Trade Memorandum T–4–93; Canadian Food Inspection Agency, August 1996). These standards, which apply to all fertilizers marketed in Canada, have been in effect since 1993, and were recently adopted (with somewhat modified assumptions for application rates) by the State of Washington. The Canadian standards are not risk-based; instead, they are based on a ''no significant degradation'' goal for fertilizer amended soils, assuming 45 years of fertilizer application. The RCRA statute does not have an analogous, explicit ''no significant degradation'' goal.

The Canadian fertilizer standards are based on a number of assumptions regarding application rates, crop types, background levels of metals in Canadian agricultural soils, and other factors. In fact, the standards are not expressed as maximum concentrations allowed in fertilizer products, but rather as limits on the total amounts of metals that can be added to farmland over time from fertilizer applications. Although it would be possible to make simplifying assumptions (*i.e.*, regarding application rates) to derive product concentration standards, translating the Canadian standards into RCRA-style limits on product contaminants might not be entirely straightforward. This has, in fact, been part of the State of Washington's experience with implementing regulatory restrictions on fertilizer contaminants based on the Canadian standards. Since the application rate of a fertilizer is a major variable in determining the amount of contaminants that are deposited on farmland, it is possible for manufacturers to simply lower the recommended application rate for a product in order to meet the standards. In EPA's view this complexity, and the potential for manipulating application rates to meet contaminant standards, is inconsistent with the objective of establishing contaminant limits in this rule that are straightforward and easily enforced.

Another issue that has been raised regarding the Canadian standards is that they do not reflect the highly variable agricultural practices and environmental conditions in the United States. Though it might be possible to modify the Canadian standards to fit conditions prevalent in the United States, doing so would be a major undertaking that would exceed the scope and purpose of this RCRA rulemaking. In any case, to date there has been little support expressed by stakeholders for using the Canadian standards (or some version of them) in this rulemaking effort (''EPA Stakeholder Meetings on Hazardous Waste Derived Fertilizers,'' US EPA, November 12–13, 1998). This may be due to the fact that there has been some controversy regarding the lack of a clear scientific basis for the Canadian standards. The standards were originally developed through an expert panel process that involved both qualitative and quantitative evaluations by a group of agronomists, soil scientists and other experts. The standards therefore are based at least in part on expert judgment, rather than a specific, replicable scientific methodology.

Despite these potential complications, EPA requests comment on whether the Canadian standards for the purpose of this RCRA rulemaking could be a feasible alternative, and justified on the basis of incremental benefits and costs. The standards are closer to the levels that have been demonstrated as achievable by fertilizer manufacturers, and EPA is not aware of any studies suggesting that the Canadian standards are less than protective of human health or the environment. Such standards have been in effect for more than seven years in Canada, and for two years in the State of Washington. The State of Washington reports that its experience with implementing Canadian-based standards has been generally positive, as evidenced in a recent summary of results from the state's fertilizer review process (''Transparent Results of Ecology's Review Process in the 1999–2000 Fertilizer Registration Cycle,'' Washington Dept. of Ecology, August 2000). However, EPA chose not to propose the Canadian fertilizer standards as RCRA standards, largely because we believe that the technology-based approach outlined in today's proposal is simpler and more straightforward, and would result in lower volumes of toxic metals in zinc fertilizers.

• *Background standards.* The option of setting contaminant limits for conditionally excluded zinc fertilizers based on naturally occurring (*i.e.*, ''background'') levels of metals in agricultural soils has been advocated by some stakeholder groups, and was also considered by EPA in the development of this proposal. In effect, this approach would require that fertilizers contain contaminants at concentrations no greater than soil background levels. This would ensure that no increase in soil metal concentrations could occur due to fertilizer use, regardless of how much or how often the fertilizers were applied, and regardless of the attendant risks.

The Agency chose not to propose this approach, for several reasons. Achieving these standards might be technically feasible, but would likely require major investments in new capital equipment by manufacturers, which would likely result in increased prices of zinc fertilizers. Alternatively (and perhaps more likely), manufacturers could simply use non-hazardous feedstock materials to make zinc fertilizer, thus avoiding RCRA regulation altogether. It

should also be noted that the standards being proposed today may not be dramatically different from levels that might be developed using a standard based on background. EPA does not think that it is necessary or appropriate in this rulemaking to place new economic burdens on industry, or to discourage legitimate recycling practices, without clear evidence of any resulting environmental benefits.

EPA solicits comments on today's proposed standards, and on the regulatory options outlined above.

b. *Product Specifications for Dioxins in Conditionally Excluded Zinc Fertilizers.*

Background. Dioxins are persistent environmental pollutants that are formed as byproducts during combustion of chlorinated organic compounds. Of the more than two hundred dioxin compounds, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) is the most toxic. Given the number of different dioxin compounds and their different health effects, dioxins are typically measured according to the ''toxicity equivalence'' method. This method assigns a ''toxicity equivalence factor'' (TEF) of one (1) to 2,3,7,8-TCDD, while the less toxic dioxin congeners are assigned values of less than one. In calculating a TEQ value, the concentration of each congener in the measured sample is multiplied by its TEF, and the products of all the congeners are summed. Thus, TEQ values essentially represent the total toxicity of dioxins in a given sample, rather than the actual concentrations of dioxins in the sample. The methodology for calculating TEFs for dioxin congeners is presented in the 1994 EPA publication entitled ''Estimating Exposures to Dioxin-like Compounds'' (EPA publication #600/6–88/005 Ca).

Although dioxin toxicity has been studied extensively, most studies have used animal test data to extrapolate adverse health effects in humans; uncertainty remains with regard to the actual human health effects of dioxins. Once EPA completes its ongoing reassessment of dioxin health effects, the dioxin reassessment will serve as the scientific and technical basis for EPA dioxin policy and programs. However, until the reassessment has completed scientific peer review, and is issued as a final EPA document, the Agency will rely on the existing dioxin assessment as a basis for its actions.

The presence of dioxins in waste-derived fertilizers first came to light in a sampling study done by the State of Washington Department of Ecology (''Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' Washington Department of Ecology Publication #99–309, April 1999). In that study, test results from two samples of K061-derived fertilizers indicated the highest levels of dioxins of all fertilizers tested, with one product measured at 240 parts per trillion (TEQ). The source of dioxins in K061 is not definitively known, but may be formed from incomplete combustion of chlorine-containing contaminants in the scrap metals used as feedstocks in electric arc steelmaking. EPA requests data and analytical results regarding the possible sources of such dioxin contamination.

Proposed product specification for dioxins. EPA is today proposing a product specification of eight parts per trillion (8 ppt) TEQ as a condition for excluding hazardous waste derived zinc fertilizers from regulation. Eight parts per trillion is an estimate of the national average background concentration of dioxins in soils in the United States, as presented in the EPA report ''Estimating Exposure to Dioxin-Like Compounds, Review Draft'' (EPA/600/6–88/000Ca; June 1994). More detailed and more recent data indicate that rural background soil concentrations are somewhat lower than 8 ppt, while urban background soil concentrations are somewhat higher. For purposes of this rulemaking, the Agency believes that 8 ppt may be a reasonable, nationally-representative background level for dioxins in soils. We request comment on the validity of the 8 ppt level as a background level for the purpose of this rulemaking, and any data that would support an alternative national background level for dioxins.

Today's proposed exclusion level for dioxins based on background soil levels reflects a somewhat different approach than the proposed exclusion levels for metals, which are in essence technology-based. We do not believe we currently have sufficient data on dioxin levels in ZSM products to establish a technology-based limit on dioxins. The Agency specifically solicits such data. In the absence of additional data, we believe that a background standard, as proposed today, should be readily achievable and would ensure no net increase in national average dioxin background levels. Other regulatory alternatives are presented later in this preamble. EPA requests comments, data and analytical results that address the proposed standard and the alternative options (including the option of not setting a standard).

The State of Washington's dioxin study included analyses of two samples from one ZSM product, which indicated dioxin levels of approximately one part per trillion (TEQ) or less. More recent analyses conducted by fertilizer manufacturers on a small number of ZSM product samples produced similar results (letter from Lester Sotsky to David Fagan, May 16, 2000). These very low dioxin levels are not surprising, since available data suggest that the levels in ZSM feedstocks are typically very low, and the manufacturing process involves several chemical refining processes. EPA assumes that zinc fertilizers which meet the proposed conditional limits on metals (which will most likely be ZSM products) would be expected to have only negligible amounts of dioxin contaminants. We believe, therefore, that the proposed dioxin standard should be easily met by fertilizers that meet the proposed limits for metals, and should not impose significant incremental economic burdens on the industry. EPA invites comment on today's proposed limit for dioxins, and its derivation.

Alternatives considered.

- *No dioxin limits.* EPA considered the option of not setting a limit for dioxins in this proposed rulemaking, since the available evidence reviewed by the Agency to date does not indicate a compelling need to do so. We decided, however, to propose a limit on dioxins because of the two samples of K061-derived fertilizer that showed high levels of dioxins relative to other fertilizers, the public's high level of concern generally over dioxins in the environment, and the uncertainties inherent in existing risk assessments. EPA solicits comments as to whether a limit on dioxins in excluded zinc fertilizers is necessary and appropriate, and whether any such limit on dioxins should be included in the final rule.
- *Risk-based limits for dioxins in fertilizers.* Another option was to develop risk-based limits specifically for zinc fertilizers, similar to the standards that have been proposed by EPA for dioxins in cement kiln dust (64 FR 45631, August 20, 1999) and in biosolids (64 FR 72045, December 23, 1999) used in agriculture. Based on admittedly limited data, it appears that a typical dioxin TEQ level in ZSM is approximately one part per trillion or less. It is probable that a risk-based dioxin standard for zinc fertilizers would be considerably higher than the actual levels of dioxins currently present in high-quality zinc fertilizers. We do not believe that the regulatory standards in this proposed rule should reflect substantially higher risk-based levels than the levels commonly found in ZSM fertilizers. In addition, developing risk-based dioxin standard

for this rulemaking would likely require considerable additional risk assessment studies. We question the need for such an investment in time and resources without a compelling need to pursue this regulatory alternative. Nevertheless, we are interested in comments and supporting information relating to this issue.

• *Limits based on the proposed dioxin standard for land-applied biosolids.* EPA currently regulates the land application of biosolids (*e.g.,* sewage sludge) under the authority of the Clean Water Act (Section 405(d) of the Clean Water Act codified at 40 CFR Part 503). These regulations have established concentration limits for metals in biosolids. In 1999, EPA also proposed a rule that included a numerical standard of 300 parts per trillion TEQ for dioxins and dioxin-like compounds for land-applied biosolids. The numerical standard includes seven 2,3,7,8-substituted dioxins, ten 2,3,7,8-substituted dibenzofurans, and 12 co-planar polychlorinated biphenyl (PCB) congeners. The proposed standard was based on a multi-pathway risk assessment which evaluates human health impacts and the fate and transport of these compounds through the environment. The proposed rule also included monitoring requirements for these compounds to ensure that the numerical standard is met. The proposed rule excluded certain small size categories of biosolids generators.

EPA believes that the proposed standards for dioxins and the existing standards for metals in land-applied biosolids are protective of human health and the environment. The standards have been developed based on statutory direction given under section 405(d) of the Clean Water Act, and obligations imposed under the terms of a Consent Decree, which also established December 15, 2001 as the date by which the Agency must promulgate a final rule. EPA is currently evaluating the comments submitted on the proposed rule for dioxins in biosolids, in preparing the final rulemaking action.

EPA chose not to base today's proposed fertilizer dioxin limits on the proposed biosolids standard for dioxins, for several reasons. The Agency received a number of comments on the proposed biosolids that are still being evaluated, and some additional assessment work is being conducted to support development of the final standard. Given the uncertainty about the final outcome of the proposed standard, we do not think it appropriate to use it as the basis for a dioxin standard in today's rule.

In addition, the proposed 300 ppt biosolids standard for dioxin is considerably higher than today's proposed limit of 8 ppt for fertilizers. We believe that the 8 ppt limit for zinc fertilizers should be easily achievable, and are concerned about establishing much higher limits than are in current fertilizers. EPA requests comment on this issue.

• *Limits based on proposed dioxin standards for cement kiln dust.* EPA's proposed rule for cement kiln dust proposed a dioxin standard of 40 ppt for agriculturally applied CKD. The CKD standard was also based on a risk assessment, analogous to the study done to support the proposed dioxin standard for land-applied biosolids. EPA chose not to develop a dioxin limit for fertilizers based on the proposed CKD standard, for essentially the same reasons (discussed above) that we chose not to set limits on metals based on that proposed rule. We request comment on the appropriateness of setting a dioxin limit for fertilizers based on the proposed CKD standard.

• *Complete ban on dioxins in fertilizers.* Some stakeholders have argued for a complete ban on making fertilizer from any hazardous waste that is generated from an industrial process known to create or release dioxin. The Agency is not proposing such a ban, primarily because we do not believe that there is a convincing environmental rationale for doing so. A complete ban would likely eliminate, for example, the use of K061 as a fertilizer feedstock material. As explained previously, we believe that K061 can be legitimately processed and recycled to make high quality zinc fertilizer. We are not aware of any evidence that (for example) ZSM products made from recycled K061 contain higher levels of dioxin than other ZSM products.

A complete ban would also require some means of determining which industrial processes create or release dioxins. This could become a highly complex technical issue involving the detection limits of various dioxin test methods, and resolving it would be beyond the scope of this rulemaking effort. In addition, it is possible, if not likely, that a complete ban would eliminate all recycling of hazardous wastes to make zinc fertilizer. The Washington dioxin study detected levels of dioxin in the low parts per trillion for many of the fertilizers tested, most of which were not waste-derived. It is therefore possible that almost all zinc fertilizer feedstocks could have detectable levels of dioxins, especially given the extraordinarily sensitive analytical methods available today. A complete ban in this rulemaking might thus prohibit the use of any hazardous secondary material as a zinc fertilizer feedstock, even if their dioxin levels were no higher than those in other available feedstock materials. This would be an arbitrary result, and would serve no real environmental purpose. EPA solicits comments and relevant data on the option of a complete ban on the use of hazardous secondary materials generated from industrial processes known to create or release dioxins, and on the other regulatory options discussed above.

2. Testing and Recordkeeping

Testing. Under today's proposal, manufacturers of conditionally excluded zinc fertilizer products would need to periodically sample and analyze their products to determine whether or not they meet the exclusion contaminant limits. If analyses show that one or more contaminants in the fertilizer exceeds an exclusion limit, the manufacturer could choose to reprocess the fertilizer so that it meets the limits. An alternative would be to manage the manufactured material as a hazardous waste, in compliance with all applicable management standards.

EPA is proposing that manufacturers test their fertilizer products for metals at least once every six months, and at least once per year for dioxins. As a practical matter, EPA believes that fertilizer manufacturers typically sample and analyze their products for metal contaminants on more or less an ongoing basis, as a means of monitoring quality control. Thus, we believe that twice-yearly testing for metal contaminants in excluded zinc fertilizers is reasonable, and would likely impose few, if any, additional testing burdens on manufacturers. We solicit comment on whether twice yearly testing of fertilizer products is appropriate in the context of this rule, or if more frequent or less frequent testing should be required.

For dioxins, less frequent (once-per-year) testing of excluded fertilizers is proposed today, for several reasons. For one thing, zinc fertilizer manufacturers do not routinely test for dioxins, so any such testing requirement would impose an additional burden on industry. Dioxin testing is relatively expensive ($2,000 or more per sample), so the costs would not be inconsequential. Further, we believe more frequent testing for dioxins in excluded zinc fertilizers may not be necessary, since (as explained earlier) it is likely that fertilizers meeting the proposed metals standards would easily meet the 8 ppt limit for dioxins.

With regard to the frequency of required dioxin testing, we considered several options. One option was to not require testing for dioxins as long as the limits for metal contaminants were not exceeded, based on the assumption that meeting the limits for metals would ensure that the dioxin limit is met. Other options could be to specify a one-time only test to verify that the excluded zinc fertilizer product meets the dioxin standard, to allow less frequent dioxin testing (*e.g.,* once every five years), or testing only when there is a manufacturing process change that could affect dioxin levels. We solicit comment on the proposed once-per-year testing condition for dioxins in excluded fertilizers, the alternative regulatory options outlined above, and other potential options.

Test methods. Today's proposal would not require manufacturers to use any specific sampling and analytical procedures in demonstrating compliance with product specification limits for metals or dioxins. The proposal would instead set a performance standard for sampling and analysis-manufacturers would have the flexibility to select appropriate methods and procedures, provided they can demonstrate that they are unbiased, precise and representative of their products. Examples of EPA-recommended testing methods and procedures are contained in the EPA publication (''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA publication SW–846, 1986). EPA solicits comment and supporting data as to whether the final rule should specify the analytical procedures to be used (such as one or more of those in SW–846, cited above), the methods used to ensure that fertilizer samples are representative, or otherwise specify in more detail methods for compliance sampling and analysis of fertilizer products.

V. Mining Wastes Used To Make Fertilizer: Request for Comments

Although zinc fertilizers are the primary focus of today's proposed rule, EPA is aware of one iron micro nutrient fertilizer product that is made from mining wastes and has been the subject of some concern by state regulators and others. This material, which is marketed under the brand name ''Aeronaut,'' is an iron micro nutrient fertilizer made from wastes generated from beneficiation zinc ores at a mine (now inactive) located in Humboldt, Arizona. The mining waste material that is used is exempt from regulation as hazardous waste, under the so-called ''Belville exemption.''

The primary reason for requesting comment on the use of mining wastes to make fertilizers has to do with the very high levels of contaminants such as arsenic in Ironite, relative to other fertilizers. Data compiled by EPA on fertilizer contaminants indicates that Ironite contains, by a wide margin, the highest levels of arsenic of all fertilizer products surveyed. A 1998 study by the Arizona Department of Health Services indicated mean arsenic concentrations in Ironite of 4400 ppm, and mean lead concentrations of 2850 ppm (''Human Health Risk Assessment for Long-Term Residential Use of Ironite Lawn and Garden Nutrient Supplement,'' Arizona Department of Health Services, October 8, 1998). In comparison, the California Department of Food and Agriculture's 1997 study indicated average arsenic concentrations in zinc micronutrient fertilizers (many of which are also waste derived) of approximately 30 ppm.

In 1998, a TCLP analysis done by the Oregon Department of Environmental Quality found that Ironite exhibited the hazardous characteristic of toxicity for arsenic (Oregon Department of Environmental Quality Laboratory, Case Number 980474, July 31, 1998). Subsequent TCLP testing of Ironite performed by Washington State's Department of Ecology generated the same result, indicating at least the potential for arsenic to leach into groundwater at levels of concern.

Arsenic is a highly toxic metal, and is also classified as a probable human carcinogen by EPA. Recent information indicates that arsenic may be of concern at levels below existing regulatory standards. A 1999 report by the National Research Council of the National Academy of Sciences, entitled *Arsenic in Drinking Water* concluded that EPA's drinking water standard of 50 ppb was not protective of human health, and should be revised downward. Subsequently, the Agency has proposed to revise the arsenic standard, to 5 ppb (65 FR 38887, June 22, 2000), although this standard has not been finalized.

In May 1998 Washington State's Department of Ecology and Department of Health commissioned *in vitro* bioavailability tests on Ironite. The results of these tests indicated an up to 36% and 81% bioavailability of arsenic and lead, respectively. These results were similar to the data initially supplied by the company to the State of Washington. From these results, the State of Washington's Department of Health concluded that this level of bioavailability could pose an acute risk from direct ingestion of the product by children. In view of this conclusion, and the fact that no warning labels were on the product at the time, the State of Washington Department of Health issued a news release advising the public that Ironite ''could be dangerous to health'' under certain circumstances (Washington Department of Ecology press release, June 5, 1998). The product is now labeled in accordance with the State of Washington's requirements.

Arsenic concentrations such as those in Ironite clearly have the potential to substantially increase soil arsenic levels, especially if the product is improperly applied (the average background level of arsenic in soils in the United States is less than 10 ppm). Ingestion of Ironite-amended soils (or worse, ingestion of the product itself) by children is also a possible concern, and could potentially cause serious adverse health effects. As mentioned above, contamination of ground water from contaminants in Ironite may be another potential exposure pathway.

Ironite is marketed nationally, primarily as a home and garden fertilizer. The company has defended the safety of the product, citing several studies that generally support its contention. The Arizona Department of Health Services report cited above concluded that '' * * * the accumulation of metals that may occur following prolonged use of Ironite does not appear to represent a health risk to child or adult residents of homes where it is used if the product is applied in accordance with the recommendations on the label.'' A separate analysis prepared for the Ironite Products Company reached a similar conclusion (''Product Safety Risk Assessment of Ironite, a Nutritional Lawn Supplement,'' RUST Environment and Infrastructure, June 1998). These studies, and other studies commissioned by the company based their findings in large part on the fact that much of the arsenic and lead in the product are present in naturally occurring arsenopyrite and galena mineral forms, respectively, which (according to the company and its supporting studies) are relatively non-bioavailable and non-toxic to humans. EPA has not studied this particular issue in depth, and has not reached any scientific conclusions as to the potential health effects of Ironite use.

EPA is not currently aware of any fertilizers other than Ironite that are being made from zinc extraction/beneficiation wastes; it is possible, however, that other fertilizers that exhibit a hazardous characteristic could be made from other exempted extraction/beneficiation wastes. In any case, at issue in this matter is that Ironite is made from mining wastes that

are currently exempt from regulation as hazardous wastes.

The Bevill exemption (RCRA section 3001(b)(3)(A)(ii)) is codified in regulations at § 261.4(b)(7), and applies generally to solid wastes from extraction and beneficiation of minerals, as well as the so-called ''special twenty'' mineral processing wastes. These types of wastes are therefore not regulated as hazardous under RCRA, even if they exhibit a hazardous waste characteristic (*e.g.,* are toxic as measured by the TCLP). However, under RCRA section 3001(b)(2)(C), such exempted wastes may be subjected to RCRA regulation, based on a finding by EPA that such regulation is warranted.

In making determinations as to whether Bevill-exempt wastes (which would include these types of fertilizers) should be regulated under RCRA Subtitle C, the RCRA statute specifies in section 8002(f) certain criteria that EPA must evaluate:

(1) The sources and volume of discarded material generated per year from mining;

(2) Present disposal practices;

(3) Potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;

(4) Alternatives to current disposal methods;

(5) The cost of those alternatives in terms of the impact on mine product costs; and

(6) Potential for use of discarded material as a secondary source of the mine product.

After extensive study, on July 3, 1986, EPA published its final regulatory determination for mining wastes, according to RCRA section 3001(b)(2)(C) (51 FR 24496). This determination concluded that extraction/beneficiation wastes should be regulated as non-hazardous solid wastes under RCRA Subtitle D. However, the Agency noted that if a Subtitle D program with appropriate federal enforcement and oversight authority is not developed for these wastes, the Agency may find it necessary to reexamine use of Subtitle C authority, with modified mining waste standards (51 FR 24501). EPA did not specifically address the practice of manufacturing fertilizers from these wastes in the 1986 regulatory determination, nor was the issue examined as part of the study prepared in support of the determination.

It should be understood that if EPA were to determine that removing the § 261.4(b)(7) exemption for these types of fertilizer products is warranted, such a decision would affect only a very small portion of the universe of Bevill-exempt mining wastes. Removing the exemption in this case would apply only to the micronutrient fertilizer products that are made from extraction/beneficiation wastes; it would not affect the regulatory status of any exempted mining wastes prior to being recycled into fertilizers.

EPA has not at this time reached any definitive conclusions as to whether Ironite and similar fertilizer products (if any) merit regulation under RCRA Subtitle C. We believe, however, that concerns over potential adverse health effects from exposure to fertilizers with extremely high arsenic levels, such as Ironite, are worthy of serious consideration. We therefore are requesting comments and additional information that may assist the Agency in making such a determination, either positive or negative. Comments and information that directly address the criteria listed above would be particularly useful, as would specific information on related issues, such as the following:

- Additional information on potential human health or ecological effects from exposure to Ironite.
- Exposure pathways that may be particularly relevant to assessing risks associated with the use and handling of this type of product.
- Information on any actual damage cases arising from use or misuse of Ironite or similar products.
- Information on any other fertilizers (including primary nutrient fertilizers containing potassium, nitrogen or phosphorous) that are made from Bevill-exempt hazardous extraction, beneficiation or mineral processing wastes.
- Information on how and where Ironite or other iron fertilizers are actually used, and by whom.
- Other relevant information.

The Agency will consider all relevant comments and information submitted on these issues. At the time EPA finalizes today's proposal, we may also issue a proposed determination as to whether or not micronutrient fertilizer products that exhibit a hazardous characteristic, and that are made from Bevill-exempt extraction/beneficiation wastes, should be subject to regulation as hazardous wastes under RCRA Subtitle C, as provided under section 3001(b)(3). Alternatively, the Agency may decide that further data and/or analysis is required before such a determination can be made.

VI. Relationship With Other Regulatory Programs

A. Cement Kiln Dust Regulatory Proposal

On August 20, 1999, EPA proposed Standards for the Management of Cement Kiln Dust (CKD) (64 FR 45631). As part of that rulemaking we proposed to exclude from regulation under RCRA CKD that is used as a liming agent on agricultural fields, provided that such CKD meet specified levels for concentrations of certain hazardous constituents. CKD is currently used as a substitute for agricultural lime. Liming materials are added to agricultural soils to maintain optimum pH for crop production and offset the effects of fertilizers that lower soil pH. CKD used for pH control is applied in high volumes relative to fertilizers and other soil nutrients. The application rate needed to maintain the desired increase in soil pH is 2 to 5 tons of CKD per acre every 2 to 3 years. EPA has a relatively large amount of data on the chemical composition of CKD. This data was collected and used as part of EPA's Report to Congress (RTC) on CKD (59 FR 709, January 6, 1994), its 1994 Notice of Data Availability (NODA) (59 FR 47133, September 14, 1994), and its 1995 Regulatory Determination on CKD (60 FR 7366, February 7, 1995).

While EPA encourages environmentally sound beneficial use of production process waste streams, including CKD, we believe that the benefits from recycling CKD must be balanced against the potential hazards which agricultural use of CKD may present. Consequently, we conducted a screening level analysis of agricultural use as part of the RTC and NODA. That analysis suggested that some CKD, when used at plausible application rates, might contain sufficiently high concentrations of metals and dioxins to cause food chain risks. Based on these initial findings, EPA conducted a more detailed analysis of potential risks from use of CKD as an agricultural liming agent. Given our data on the chemical composition of CKD, and the preliminary results of the risk assessment, we concluded that use of a risk assessment conducted to identify protective levels of potentially hazardous constituents in CKD used as a liming agent provided the most appropriate way to allow for safe beneficial use of CKD.

Results of EPA's more detailed risk assessment suggest that concentrations of arsenic, thallium, lead, cadmium and chlorinated dioxins and furans may be present in CKD above levels that pose potential risk to human health. Based on

these findings, EPA proposed to limit the concentrations of these compounds that can be present in CKD used to adjust soil pH. In other words, EPA proposed standards to limit concentrations of these constituents in CKD used as agricultural lime because our risk analysis indicated that these compounds are present in CKD in excess of levels that may pose risk to human health when CKD is applied at rates necessary to attain desired soil pH. Based on these risk findings, EPA expressed concern in the proposal that unregulated use of CKD as an agricultural liming agent may cause adverse effects on human health.

EPA received substantial comments on this aspect of the 1999 CKD proposal, and is now evaluating them.

B. EPA Standards for Biosolids

EPA currently regulates the land application of biosolids (*e.g.*, sewage sludge) under the authority of the Clean Water Act (Section 405(d) of the Clean Water Act codified at 40 CFR Part 503). These regulations have established concentration limits for metals in biosolids. In 1999, EPA also proposed a rule that included a numerical standard of 300 parts per trillion TEQ for dioxins and dioxin-like compounds for land-applied biosolids. The numerical standard includes seven 2,3,7,8-substituted dioxins, ten 2,3,7,8-substituted dibenzofurans, and 12 co-planar polychlorinated biphenyl (PCB) congeners. The proposed standard was based on a multi-pathway risk assessment which evaluates human health impacts and the fate and transport of these compounds through the environment. The proposed rule also included monitoring requirements for these compounds to ensure that the numerical standard is met. The proposed rule excluded certain small size categories of biosolids generators.

EPA believes that the proposed standards for dioxins and the existing standards for metals in land-applied biosolids are protective of human health and the environment. The standards have been developed based on statutory direction given under section 405 (d) of the Clean Water Act, and obligations imposed under the terms of a Consent Decree, which also established December 15, 2001 as the date by which the Agency must promulgate a final rule. EPA is currently evaluating the comments submitted on the proposed rule for dioxins in biosolids, in preparing the final rulemaking action.

C. State Fertilizer Regulations

Virtually all States have regulatory programs for fertilizers, which are usually administered by state agricultural agencies. Traditionally, the primary focus of these regulatory programs has been to ensure that fertilizers are accurately classified and labeled, and meet manufacturers' plant nutrient claims. Until quite recently, state regulatory programs did not explicitly address the issue of controlling contaminants such as heavy metals in fertilizer products. In 1998 the State of Washington enacted legislation to create this country's first comprehensive system for regulating fertilizer contaminants, to include limits on metal contaminants in fertilizers, labeling requirements, and a mandate for several research projects to study the effects of metal contaminants on food crop plants. The specific standards for metals in fertilizers were adapted from the Canadian standards. The Washington regulations, which apply to all fertilizers marketed in the state, also mandate that waste-derived fertilizers receive additional scrutiny as to their content and origin, as part of the fertilizer registration process. Washington also now maintains a publicly accessible internet website containing data on all fertilizers registered in the State of Washington, including data on levels of non-nutrient metals in each registered product. This database can be accessed at *hhtp://www.wa.gov/80/ecology/hwtr/fertilizer/reports/products.html*.

The State of Texas has enacted similar regulations based on the federal standards for biosolids. The State of California has also done extensive research into fertilizer contaminants, and is currently developing a California regulatory program. A number of other states are likewise considering regulatory initiatives in this area.

EPA supports State efforts to regulate contaminants in fertilizers. EPA regulates only a small percentage of the fertilizers currently on the market (perhaps as little as one percent or less of all fertilizers are derived from hazardous wastes, subject to RCRA requirements), and the potential certainly exists for contaminant problems in other types of fertilizers. For example, cadmium levels in certain phosphate fertilizers (which typically are not waste derived) have been the subject of some concern recently by researchers, state regulators and others. We believe that the State of Washington's fertilizer regulatory program has been highly successful in controlling, and in a number of cases reducing, contaminants in fertilizer products sold in that state. Washington has also successfully pioneered the idea of making fertilizer contaminant data available to the public, farmers and others through the internet.

As more states develop comprehensive regulatory programs for fertilizers, the consistency between RCRA standards and more broadly applicable state standards is expected to become more and more at issue. We do not believe that such regulatory inconsistency makes sense environmentally or from a public policy perspective, and the Agency urges states at a minimum to adopt consistent regulatory standards for all zinc fertilizers.

VII. State Authority

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that

are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's proposal would be promulgated pursuant to non-HSWA authority, and contains provisions that are both more stringent and less stringent than the current Federal program. The elimination of the exemption for K061 derived fertilizers and the proposed product specification limits are more stringent provisions which the States would have to adopt if promulgated. The conditional exclusion for hazardous waste used in zinc fertilizers is less stringent. EPA strongly encourages States to adopt all of the provisions of the rule once they are finalized.

VIII. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 October 4, 1993) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to 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 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; 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 economic analysis suggest that this rule is not economically significant under Executive Order 12866. OMB has deemed this rule to be significant for novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.''

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's proposed rule for regulatory modifications to the definition of solid waste for zinc-containing hazardous waste-derived fertilizers, followed by a presentation of the cost, economic impact and benefit results, may be found in the background document: ''Economic Analysis for Regulatory Modifications to the Definition of Solid Waste For Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Proposed Rulemaking,'' which was placed in the docket for today's proposed rule.

1. Methodology Section

To estimate the cost, economic impacts to potentially affected firms and benefits to society from this proposed rulemaking, we analyzed data from zinc micronutrient producers, firm financial reports, trade associations and chemical production data. The Agency has used both model facilities and actual facilities in analyzing the effects of this proposed regulation.

To estimate the incremental cost of this rule making, we reviewed baseline management practices and costs of potentially affected firms. The Agency has modeled the most likely post-regulatory scenario resulting from the listing (*e.g.,* shifts to non-hazardous fertilizer feedstocks, shifting from zinc oxysulfate to zinc sulfate monohydrate production) and the estimated the cost of complying with it. The difference between the baseline management cost and the post-regulatory cost is the incremental cost of the rulemaking.

To estimate the economic impact of today's proposed rulemaking, we compared the incremental cost of the rulemaking with model firm sales. The Agency has also considered the ability of potentially affected firms to pass compliance costs on in the form of higher prices.

To characterize the benefits of today's proposal, we evaluated available data and presented a qualitative assessment of benefits including ecological benefits and protection of natural resources such as groundwater.

2. Results

a. *Volume Results.* Data reviewed by the Agency indicates that there are 3 to 4 zinc micronutrient producers, one zinc producer, one steel mill, one waste-to-energy facility and 23 brass fume dust generators (ingot makers, mills, and foundries) potentially affected by today's proposed rule. Although the exact amount of hazardous waste used in zinc micronutrient fertilizer production an annual basis varies from year to year, in 1997, data indicate that approximately 46,000 tons of hazardous waste were used in the production of zinc micronutrient fertilizer. The principal hazardous waste feedstocks were tire ash, electric arc furnace dust (K061) and brass fume dust from ingot makers, mills and foundries.

b. *Cost Results.* For the part of today's proposed rule pertaining to zinc micronutrient fertilizers, we estimate the total annual cost savings from today's proposal to be $3.24 million for all facilities. Costs savings for different groups are summarized in Table 1.

TABLE 1.—ESTIMATED INCREMENTAL COSTS AND COST SAVINGS BY FACILITY CATEGORY

Potentially Affected Facility	Incremental Annual Costs (Cost Savings) (1999$)
Zinc Oxysulfate Producers	($0.29 million)
Zinc Sulfate Monohydrate Producers	($0.75 million)
Primary Zinc Products	($1.0 million)
Tire Ash Generators	($0.2 million)
Brass Fume Dust Generators	($1.4 million)
Total	($3.24 million)

Costs and cost savings to zinc oxysulfate producers are estimated from either shifting production to zinc sulfate monohydrate or shifting to nonhazardous sources of oxysulfate feedstocks. Zinc sulfate monohydrate producers and primary zinc producers are estimated to realize cost savings from shifting brass fume dust currently used in animal feed production to fertilizer production. Under current zinc sulfate markets, fertilizers are sold at a higher price than animal feed. Waste-to-Energy facilities that generate tire ash are expected to incur additional cost from having to shift their ash from fertilizer production to zinc oxide reclamation. And brass fume dust generators (mills, ingot makers, foundries) are estimated to incur cost savings from shifting their dust from zinc reclamation and animal feed to fertilizer production.

c. *Economic Impact Results.* To estimate potential economic impacts resulting from today's proposed rule, we use a first order economic impacts measure: the estimated incremental costs or cost savings of today's proposed rule as a percentage of affected firms sales. Because of data limitations, EPA was unable to obtain profit information for potentially affected firms. EPA solicits comment about the availability and usefulness of profit data in

evaluating the economic impact of this proposal on these entities. For two zinc oxysulfate producers the estimated impact of the rule is 1.42 percent in incremental costs for one firm and 0.64 percent in cost savings for the other. Two zinc sulfate monohydrate producers are estimated to realize cost savings of 0.1 and 15 percent of revenue. For the primary zinc producer, the rule is estimated to result in cost savings equal to 1 percent of firm sales. The waste-to-energy facility is estimated to incur costs of 1.22 percent of annual revenues. More detailed information on this estimate can be found in the economic analysis placed into today's docket.

d. *Benefits Assessment.* Because EPA did not use any risk assessments of current or projected metals and dioxin concentrations in zinc fertilizers in the development of this rulemaking, the Agency cannot make any quantitative conclusions about the risk reduction from today's proposal. To estimate the benefits resulting from today's rule, EPA looked at available literature and records regarding hazardous waste feedstocks used to make zinc micronutrient fertilizers. The data suggest that today's rule will reduce loading of toxic non-nutritive constituents to the soil. Two zinc oxysulfate samples produced from hazardous waste and analyzed by the State of Washington had dioxin concentrations between 17 and 42 times background level (''Final Report Screening Survey for Metals and Dioxins in Fertilizer Products and Soils in Washington State,'' Washington State Department of Ecology, April 1999, Figures 1–1 and 1–2). In addition, the zinc oxysulfate manufacturing process does not remove any of the lead or cadmium from the feedstock material. If promulgated, today's proposal would reduce annual loadings of these metals to the soil.

In addition, today's proposal may reduce natural resource damage and contamination to groundwater. EPA is aware of at least two damage incidents caused by land placement of hazardous waste prior to fertilizer production that resulted in contamination of either groundwater or surrounding surface water bodies adjacent to the site. (''Report of RCRA Compliance Inspection at American Microtrace Corporation,'' US EPA Region VII, December 4, 1996, Editorial, The Atlanta Journal/Constitution, April 11, 1993). Today's proposal may increase non-use values for these environmental amenities as well.

The Agency also believes that this rule has the potential for reducing what may be considered low probability but high consequence adverse human health or environmental impact if contamination from hazardous secondary material used in fertilizer production should, because of geological conditions such as karst terrain, reach a major population drinking water source or sensitive environmental location. This proposed rule should lessen the chances of this type of event even though the probabilities of such occurrences and the magnitude of any impacts are not known.

B. 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 fewer than 1000, 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (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; or (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 final rule on small entities, we have 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 proposed 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.

There are three small entities incurring incremental costs resulting from this rulemaking. This first firm is Exeter Energy, a waste-to-energy facility that burns tires. It is estimated to incur annual costs of $220,000 which is slightly more than one percent of its annual sales. Exeter Energy is only one of two waste-to-energy facilities in the United States that burns tires for energy. It is therefore likely that this firm will be able to pass on much of this cost through price increases for its services. EPA does not believe that this firm will be significantly impacted. The second firm, Bay Zinc, is a zinc sulfate/zinc oxysulfate producer. The firm is estimated to realize costs equal to slightly more than one percent of revenues for its zinc oxysulfate line. However, EPA does not believe that Bay Zinc will be significantly impacted because its increased costs will be offset to some extent by the increased availability of less expensive (previously hazardous waste) feedstocks such as brass fume dust for its zinc sulfate monohydrate line. EPA has only analyzed the impact of the rule on this firm's zinc oxysulfate line. However the rule will affect both zinc fertilizer lines. The net economic impact of the rule on Bay Zinc is likely to be far less than 1 percent of the firm's sales notwithstanding the cost to its oxysulfate line. EPA also notes that there is currently a market trend away from zinc oxysulfate in favor of zinc sulfate monohydrate due to the former's higher heavy metal content (see www.chemexpo.com/news/newsframe.cfm?framebody=/news/profile.cfm as obtained August 27, 2000 for zinc sulfate). Therefore, it is likely that even in the absence of this proposed rulemaking, the marketability of zinc oxysulfate is declining in favor of zinc sulfate monohydrate production.

For the reasons discussed above, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1189.08) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division;

U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by email at *farmer.sandy@epa.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

EPA is proposing the following conditions for reporting and recordkeeping by generators and manufacturers: The proposed rule would require generators to submit a one-time notice to the EPA Regional Administrator (or the state Director in an authorized state) and to maintain all records of all shipments of excluded hazardous secondary materials for a minimum of three years.

As a condition of the exclusion, manufacturers would be required to submit a one-time notice, retain for a minimum of three years records of all shipments of excluded hazardous secondary materials that were received by the zinc fertilizer manufacturer during that period, and submit an annual report identifying the types, quantities and origins of all such excluded materials that were received by the manufacturer in the preceding year. The manufacturer would also be required to perform sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. These conditions would replace the current hazardous waste regulatory requirements for reporting and recordkeeping and are designed to improve the accountability system, and government oversight capabilities over the handling of secondary materials used to make zinc fertilizers.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 45 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $9,875. However, in addition to the new paperwork requirements in the proposed rule, EPA also estimated the burden and cost savings that generators and manufacturers could expect as a result of no longer needing to comply with the existing RCRA information collection requirements for the excluded materials. This cost savings of $21,149 minus the $9,875 cost for the new paperwork requirements would result in an overall cost savings $11,275 from the proposed rule. The net cost to EPA of administering the rule was estimated at approximately $244 per year.

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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 28, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by December 28, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA 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. 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 to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because this rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202, 203, and 205 of UMRA.

E. Federalism—Applicability of Executive Order 13132

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. 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.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It 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 proposed rule directly affects primarily zinc micronutrient producers and generators of hazardous wastes used in zinc fertilizer production. There are no State and local government bodies that incur direct compliance costs by this rulemaking. And State and local government implementation expenditures are expected to be less than $500,000 in any one year (for more information, please refer to the background document entitled ''Federalism Analysis (Executive Order 13132) for Zinc-Containing Hazardous Waste-Derived Fertilizers, Notice of Proposed Rulemaking: Substantial Direct Effects'', August 2000). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This proposed rule would preempt State and local law that is less stringent for these zinc-bearing hazardous wastes. Under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k, the relationship between the States and the national government with respect to hazardous waste management is established for authorized State hazardous waste programs, 42 U.S.C. 6926 (§ 3006), and retention of State authority, 42 U.S.C. 6929 (section 3009). Under section 3009 of RCRA, States and their political subdivisions may not impose requirements less stringent for hazardous waste management than the national government. By publishing and inviting comment on this proposed rule, we hereby provide State and local officials notice and an opportunity for appropriate participation. Thus, we have complied with the requirements of section 4 of the Executive Order.

F. 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 of Indian Tribal governments, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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.''

Today's proposal would not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) Is ''economically significant'' as defined under Executive Order 12866; and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered. This proposal is not economically significant under Executive Order 12866.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA has proposed to condition exclusion on the fertilizer material based on contaminant levels for metals and dioxins. And after considering alternatives, EPA has determined that it would be impractical to use voluntary consensus standards for the reasons stated in Section C above.

I. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific

to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule pertains to hazardous wastes used in zinc micronutrient production. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities. Today's proposed rule is intended to reduce risks of excluded hazardous secondary materials as proposed, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

The wastes proposed for exclusion will be subject to protective conditions regardless of where they are generated and regardless of where they may be managed. Although the Agency understands that the proposed exclusion, if finalized, may affect where these wastes are managed in the future, the Agency's decision to conditionally exclude these materials is independent of any decisions regarding the location of waste generators and the siting of waste management facilities. Today's proposed rule will reduce loadings of toxic non-nutritive constituents to the soil. It will also preclude outdoor storage of hazardous secondary materials used in zinc fertilizer production. EPA believes that these provisions of the proposal will benefit all populations in the United States, including low-income and minority communities.

We encourage all stakeholders including members of the environmental justice community and members of the regulated community to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: November 15, 2000.

Carol M. Browner,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924y, and 6938.

Subpart A—General

2. Section 261.4 is amended by adding new paragraphs (a)(20) and (21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively.

(ii) Generators of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Store the excluded secondary material in tanks, containers, or in buildings. The tanks, containers or buildings must be constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent against wind dispersal or contact with rainwater. Tanks used for this purpose must be structurally sound and must have roofs or covers that prevent contact with wind or rain. Containers used for this purpose that are not located in buildings must be made of metal or other rigid material that has structural integrity, and must have lids or covers that prevent wind or water dispersal of the stored materials.

(B) Submit a one-time notice to the Regional Administrator or State Director in whose jurisdiction the exclusion is being claimed, which contains the following information:

(1) Name, address and EPA ID number of the generator facility;

(2) Name and address of the fertilizer manufacturer(s) to which excluded secondary materials are expected to be shipped;

(3) A brief description of the industrial process(s) which generated the secondary material, and estimated annual quantity of excluded secondary materials that are expected to be shipped to each fertilizer manufacturer; and

(4) If excluded secondary materials are to be shipped off-site, a certification that the state in which the receiving facility(s) is located is authorized to administer the provisions of this section.

(C) Maintain at the generating facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the fertilizer manufacturer who received the excluded material, documentation confirming the manufacturer's receipt of the shipment, and a notice to the receiving manufacturer that the shipped materials are excluded from regulation, subject to the conditions specified in this paragraph (a)(20);

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators, as specified in paragraph (a)(20)(ii)(A) of this section.

(B) Submit a one-time notification to the Regional Administrator or State Director that, at a minimum, contains the following information:

(1) Name, address and EPA ID number of the manufacturing facility.

(2) Estimated annual quantities of excluded hazardous secondary materials to be used, and the industrial processes from which they are expected to be generated.

(3) Names, locations and EPA ID numbers of generator facilities expected to supply such materials.

(C) Maintain for a minimum of three years records of all shipments of excluded secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, type and quantity received, and a brief

description of the industrial process that generated the waste.

(D) Submit to the Regional Administrator or State Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizer or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Total [1]
1. Lead	2.8
2. Cadmium	1.4
3. Arsenic	0.6
4. Mercury	0.3
5. Nickel	1.4
6. Chromium	0.6

[1] Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm).

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) that is introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21)(iii)(F).

(iv) In an enforcement action, the burden of proof to establish conformance with the conditions in this paragraph (a)(21)(iv) and in paragraph (a)(20) of this section, shall be on the generator or manufacturer claiming the exclusion.

* * * * *

PART 266—[AMENDED]

3. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3004, and 3014, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

4. Section 266.20 is amended by removing the last two sentences of paragraph (b), and adding a new paragraph (d) to read as follows:

§ 266.20 Applicability.

* * * * *

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(1) They are zinc fertilizers excluded from the definition of solid waste according to § 261.4(a)(21) of this chapter; or

(2) For non-zinc fertilizers, the fertilizers meet the applicable treatment standards in subpart D of Part 268 of this chapter for each hazardous waste that they contain.

PART 268—[AMENDED]

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6921.

Subpart D—Treatment Standards

§ 268.40 [Amended]

6. Section 268.40 is amended by removing paragraphs (i) and (j).

[FR Doc. 00–29876 Filed 11–27–00; 8:45 am]

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Federal Register

Tuesday,
November 28, 2000

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 33

Revised Filing Requirements Under Part 33 of the Commission's Regulations; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM98–4–000; Order No. 642]

Revised Filing Requirements Under Part 33 of the Commission's Regulations

Issued November 15, 2000.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising 18 CFR Part 33 to update the filing requirements for applications under part 33, including public utility mergers. The Commission expects that, by providing applicants more detailed guidance for preparing applications, the revised filing requirements will assist the Commission in determining whether applications under section 203 of the Federal Power Act are consistent with the public interest and will provide more certainty and expedition in the Commission's handling of such applications. This final Rule generally follows the approach of the NOPR. This Rule affirms the Commission's screening approach to mergers that may raise horizontal competitive concerns and sets forth specific filing requirements consistent with the Appendix A analysis set forth in the Merger Policy Statement. This Rule also establishes guidelines for vertical competitive analysis and accompanying filing requirements for mergers that may raise vertical market power concerns. The Rule streamlines filing requirements and reduces the information burden for mergers and other dispositions of jurisdictional facilities that raise no competitive concerns and eliminates certain filing requirements in part 33 that are outdated or no longer useful to the Commission in analyzing mergers and other dispositions of jurisdictional facilities.

EFFECTIVE DATE: This Final Rule will become effective January 29, 2001.

FOR FURTHER INFORMATION CONTACT:

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Appendix—List of Commenters

I. Introduction and Summary

In 1996, the Commission issued the Merger Policy Statement (Policy Statement) updating and clarifying the Commission's procedures, criteria and policies concerning public utility mergers in light of dramatic and continuing changes in the electric power industry and the regulation of that industry.[1] The purpose of the Policy Statement was to ensure that mergers are consistent with the public interest and to provide greater certainty and expedition in the Commission's analysis of merger applications. Therefore, we stated in the Policy Statement that we would issue a notice of proposed rulemaking to set forth more specific filing requirements consistent with the Policy Statement and additional procedures for improving the merger hearing process.[2]

Following the issuance of the Policy Statement, applications filed pursuant to section 203 of the Federal Power Act (FPA) [3] have varied widely in the quantity and quality of information they have included, particularly with respect to market analyses and the supporting data. Thus, on April 16, 1998, the Commission issued a notice of proposed rulemaking in this docket [4] to revise 18 CFR part 33 by specifying clear and succinct filing requirements for all applications submitted pursuant to section 203 of the FPA (including non-merger transactions). In this NOPR, the Commission analyzed information that is needed to evaluate section 203 applications to determine how the filing requirements under part 33 could be made more helpful to the electric industry, intervenors and businesses operating in the emerging competitive landscape. The proposed revised filing requirements were intended to provide greater certainty about what needed to be filed in section 203 applications. This would allow applicants to prepare their proposals more quickly and efficiently and to better predict the outcome of the Commission's evaluation. The proposed requirements

[1] Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Statutes and Regulations ¶ 31,044 (1996), *reconsideration denied,* Order No. 592–A, 62 Fed. Reg. 33,34 (1997), 79 FERC ¶ 61,321 (1997) (Policy Statement).

[2] Policy Statement at p. 30,111 n.3.

[3] 16 U.S.C. 824b.

[4] Revised Filing Requirements Under Part 33 of the Commission's Regulations, Notice of Proposed Rulemaking, 63 Fed. Reg. 20340 (1998), FERC Statutes and Regulations ¶ 32,258 (1998) (NOPR).

would also facilitate intervenors' evaluations of section 203 applications and provide for a more timely and accurate section 203 decision-making process by the Commission. An additional goal of the NOPR was to lessen regulatory burdens on the industry by eliminating outdated and unnecessary filing requirements and streamlining the filing requirements for mergers that clearly do not raise competitive concerns.

Based on careful consideration of the comments submitted in response to the NOPR,[5] the Commission now adopts a Final Rule that amends Part 33 of the Commission's regulations. This Final Rule generally follows the approach of the NOPR. Specifically, in this Rule we are: (1) Affirming the Commission's screening approach to mergers that may raise horizontal competitive concerns and setting forth specific filing requirements consistent with the Policy Statement's Appendix A analysis;[6] (2) setting forth guidelines for vertical competitive analysis and accompanying filing requirements for mergers that may raise vertical market power concerns; (3) streamlining filing requirements and reducing the information burden for mergers and other dispositions of jurisdictional facilities that raise no competitive concerns; and (4) eliminating certain filing requirements in Part 33 that are outdated or no longer useful to the Commission in analyzing mergers and other dispositions of jurisdictional facilities. The Final Rule also addresses the use of computer simulation models. As discussed further below, there is currently no consensus as to which model(s) to use, and there are many issues that must be addressed before the Commission is able to determine the appropriateness of any particular model. Therefore, we believe that a technical conference is needed. The Final Rule also reorganizes part 33 so that users of the regulations can quickly find requirements that apply to the section 203 transactions in which they are interested.

Following the Background and general Discussion sections below (Sections II and III), this preamble sets forth requirements for the competitive analysis screen for horizontal mergers, followed by the guidelines for vertical competitive analysis. The preamble then discusses effects on rates and regulation and a number of emerging issues, including computer models, as noted above.

[5] The commenters, and abbreviations for them as used herein, are listed in the Appendix attached to this Final Rule.

[6] Policy Statement at p. 30,128.

II. Background

Pursuant to section 203, Commission authorization is required for public utility mergers and consolidations and for public utility acquisitions or dispositions of jurisdictional facilities. Section 203(a) of the FPA provides that:

> No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.

Transactions covered by this provision will be referred to as ''section 203 transactions.'' Section 203 provides that the Commission shall approve such transactions if they are consistent with the public interest.

The Policy Statement set out three factors (revising the 30-year-old criteria that evaluated mergers using six factors) the Commission considers when analyzing a merger proposal: Effect on competition; effect on rates; and effect on regulation.[7] With respect to the effect on competition, the Policy Statement adopted the Department of Justice (DOJ)/Federal Trade Commission (FTC) 1992 Horizontal Merger Guidelines (Guidelines)[8] as the analytical framework for examining horizontal market power concerns. The Policy Statement also adopted an analytical screen (the Appendix A analysis) that is intended to allow early identification of mergers that clearly do not raise competitive concerns. The Commission believes that the screen produces a reliable, generally conservative analysis of the horizontal competitive effects of a proposed merger. As part of the screen analysis, the Policy Statement requires generally that the applicants define product and geographic markets that are likely to be affected by the proposed merger and measure the concentration in those markets. The Policy Statement suggests a way of defining geographic markets based on identifying alternative competitive suppliers to the merged firm—the delivered price test. The concentration of potential suppliers included in the market is then measured by the Herfindahl-Hirschman Index (HHI) and used as an indicator of the potential for market power.

In its Policy Statement, the Commission said that it will examine the second factor, the effect on rates, by focusing on ratepayer protections designed to insulate consumers from any harm resulting from the merger. Applicants were directed to attempt to negotiate such measures with their customers before filing merger applications.

Finally, the Policy Statement set forth a third factor for examination, the effect on regulation, both state regulation and any potential shift in regulation from the Commission to the Securities and Exchange Commission (SEC), the latter as the result of a merger creating a registered public utility holding company. With respect to a merger's effect on state regulation, where the state commissions have authority to act on the merger, the Commission stated that it intends to rely on them to exercise their authority to protect state interests. With respect to shifts of regulatory authority from this Commission to the SEC, the Policy Statement explained that, unless applicants commit themselves to abide by this Commission's policies with regard to affiliate transactions, we will set the issue of the effect on regulation for hearing.[9]

Since the issuance of the Policy Statement and the NOPR, the Commission has gained valuable experience evaluating various types of mergers and other section 203 transactions. Some of these were mergers of interconnected, adjacent, vertically-integrated electric companies. Others involved utilities that were geographically separated and not physically interconnected. Yet others involved mergers of electric companies with natural gas companies and acquisitions of jurisdictional utilities by foreign firms.

The Commission has devoted substantial resources to considering whether proposed mergers would significantly increase horizontal or vertical market power, thereby raising competitive concerns. Based on experience in reviewing the issues related to competition presented by these mergers, the Commission, in various merger orders, has provided further clarification of the Appendix A analysis set out in the Policy Statement and guidance for evaluating the

[7] Although we apply these factors to other section 203 transactions as well, the filing requirements and the level of detail required may differ.

[8] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 57 FR 41,552 (1992), *revised*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (Apr. 8, 1997).

[9] *See* Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 at 61,412, *order denying reh'g*, 81 FERC ¶ 61,173 (1997) (*Atlantic City/Delmarva*).

competitive effects of proposed vertical mergers.[10]

As a result of these efforts, the Commission has been able to act more expeditiously and to provide a more predictable decisionmaking process for the more than 50 merger cases filed since the issuance of the Policy Statement. For all merger applications submitted in the past year, the Commission has issued an initial order within the 150-day target announced in the Policy Statement. Since the issuance of the Policy Statement, the average processing time for merger applications has been 117 days. The Commission has been able to act expeditiously on merger proposals where applicants submitted concise, accurate information that demonstrated that the proposed merger was consistent with the public interest, pursuant to the guidance provided in the Policy Statement.

Based on our experience and the comments we have received, we are now revising our merger filing requirements to enable applicants and intervenors to more effectively and predictably address the types of issues that have arisen in the applications filed since the issuance of the Policy Statement, as well as issues that will undoubtedly arise as the industry continues to make the transition to a more competitive marketplace. Below, we set forth revised filing requirements that are consistent with the Policy Statement. We also update and streamline certain areas of our current filing requirements so as to expedite and better focus applications and our review processes.

In the NOPR, we raised a set of emerging issues resulting from the changes occurring in the energy industry that could affect mergers and other section 203 transactions. In this Final Rule, we address the emerging issues raised in the NOPR and by commenters. For example, we note the potential for computer-based simulation models to assist us in our analysis of merger applications. We also address retail competition and restructuring actions, including RTO development and other emerging competitive issues raised by mergers and other section 203 transactions. Programs such as retail access, market-based rates for generation-based products, and product line diversification by integrated energy companies could affect our analysis of section 203 applications. This Final Rule explains that these types of initiatives may require that applicants file additional information so the Commission and intervenors may accurately analyze the potential effects of section 203 transactions. Finally, we also look at the request of some commenters that the Commission impose a moratorium on mergers. As we explain in more detail below, we decline to do so.

[10] *See, e.g.,* Enova Corporation and Pacific Enterprises, 79 FERC ¶ 61,372 (1997) (*Enova*) and Dominion Resources, Inc. and Consolidated Natural Gas Company, 89 FERC ¶ 61,162 (1999) (*Dominion/CNG*).

III. Discussion

A. Revisions to Part 33—Basic Information Requirements

In the NOPR, the Commission explained that a portion of the basic information that has historically been required for all section 203 applications is no longer needed for those applications that involve routine dispositions of jurisdictional facilities, and accordingly, we proposed eliminating certain filing requirements. Due to the increasing complexity of the section 203 applications being filed, the NOPR also proposed to eliminate § 33.10, which set forth the 45-day time frame for Commission action. However, we affirmed our intention to process section 203 applications as expeditiously as practicable, with a stated goal of issuing an initial order for most mergers within 150 days of a completed application.[11]

The NOPR also proposed to reorganize and clarify certain regulations under part 33. The NOPR explained that the goal of these measures is to streamline and clarify our filing requirements, make our processing of section 203 applications more efficient and timely, and provide greater certainty regarding the Commission's probable action on applications.

Part 33 currently contains twelve basic information requirements (§ 33.2(a) through (l)) and nine exhibits (§ 33.3 Exhibits A through I) that an applicant must file. Some of these requirements overlap. For example, §§ 33.2(i) and 33.3 Exhibit G both concern applications filed with state commissions. Therefore, the NOPR proposed to consolidate these sections into § 33.2(i). Other information requirements are no longer relevant to our review of applications filed under this part. An example is § 33.3, Exhibit A, which concerns resolutions by applicants' directors authorizing the transaction for which Commission approval is requested. In the NOPR, we stated that this information is not necessary to determine whether a transaction is consistent with the public interest.

[11] *Id.,* n. 12.

The current §§ 33.2(g) and 33.3, Exhibits C, D, E and F, relate to financial statements and account balances. Because a number of public utilities are exempt from the record-keeping requirements of the Commission's Uniform System of Accounts, the NOPR proposed that we impose our accounting requirements only on those applications that result in accounting revisions under the Commission's Uniform System of Accounts.

Further, the NOPR proposed to eliminate § 33.10, which stated that the Commission will ''ordinarily'' act within 45 days on section 203 applications.[12] In addition, the NOPR proposed revising § 33.6, which would incorporate the requirement of the current § 33.2(l) to file a form of notice and would require submission of the notice in electronic format. With minor modifications, we set forth the following revisions to the basic information requirements proposed in the NOPR.[13]

No revision will be implemented to proposed *§ 33.1—Applicability.*

No change was proposed to *§ 33.2(b)—Authorized representative*—except that the phone and fax numbers of the person authorized to receive communications regarding the application, which have been voluntarily provided by nearly all applicants, are required, as are E-mail addresses.

Proposed *§ 33.2(c)—Description of the applicant*—incorporates the requirements of current §§ 33.2(c) and (k) and Exhibit B and requires a description of each applicant's business activities, corporate affiliations, officers in common with other parties to the transaction, and jurisdictional customers. As discussed later, this section also requires applicants to provide information about RTO membership. Information on corporate affiliations must include a complete list of energy affiliates and subsidiaries, percentage ownership interests in such affiliates, and a description of the primary business in which each energy affiliate is engaged. An energy affiliate includes those companies which provide electric products or inputs to electric products. This section also

[12] Although we are eliminating this section of our Part 33 regulations, the Commission intends to continue to process section 203 applications as expeditiously as practicable. As stated in the Policy Statement, the Commission continues to believe that, for example, we can issue an initial order for most mergrs within 150 days of receiving a completed application.

[13] In this preamble, we will not note all the sections that are not revised. However, these sections are set forth in the attached regulatory text.

requires that organizational charts be filed.

Proposed *§ 33.2(d)—Description of the jurisdictional facilities*—requires a general description of each applicant's jurisdictional facilities.

Proposed *§ 33.2(e)—Description of the proposed transaction*—incorporates the old §§ 33.2(d), (e), (f) and (h), requiring a description of the proposed transaction for which Commission authorization is sought, including all parties to the transaction, the jurisdictional facilities involved or affected by the transaction, the type of consideration for the transaction,[14] and the effect of the transaction on each applicant's jurisdictional facilities and securities, including transfers of operational control and securities.

Proposed *§ 33.2(f)—Contracts related to the proposed transaction*—incorporates the requirements of the old Exhibit H.

Proposed *§ 33.2(g)—The applicant's public interest statement*—includes the requirement that each applicant address the three factors the Commission considers in determining whether a transaction is consistent with the public interest, as set forth in the Policy Statement.

Proposed *§ 33.2(h)—Maps*—incorporates the requirements of the old Exhibit I and is applicable if the proposed transaction involves a disposition of physical facilities and to merger applications.

Proposed *§ 33.2(i)—Other regulatory approvals*—incorporates the requirements of the old § 33.2(i) and Exhibit G. In addition, copies of relevant orders, if any, obtained by each applicant from other regulatory bodies are required. If the regulatory bodies issue orders pertaining to the proposed transaction after the date of filing with the Commission, and before the date of final Commission action, the applicant must supplement its application promptly with a copy of these orders.[15] However, § 33.2(i) eliminates a requirement that copies of the applications filed with those bodies be filed with the Commission, as this information largely duplicates the information required in the Part 33 regulations.

Proposed *§ 33.8—Number of copies*—includes the information required in the old § 33.6. This section now requires eight copies instead of five, sets out copy requirements for information filed with a request for privileged treatment and also requires that each applicant file electronic as well as paper copies of any competitive analysis screen filed pursuant to §§ 33.3 and 33.4.

Proposed *§ 33.9—Protective orders*—requires each applicant to include a proposed protective order if it seeks privileged treatment for any information submitted. The protective order enables the parties to review any of the data, information, analysis or other documentation relied upon by the applicant to support its application and for which privileged treatment is sought.

Comments

In general, commenters support the NOPR's goals to streamline and clarify our basic information filing requirements. Commenters subscribe to the need for a clear regulatory merger policy and an efficient process that provides a degree of certainty about how the Commission will review merger applications, and assures that mergers are consistent with the public interest. Commenters generally commend the Commission's efforts, and support or do not oppose the proposed revisions to current §§ 33.1, 33.2 and 33.3. Specifically, the Midwest ISO Participants and Gridco Commenters support the Commission's efforts to streamline and simplify the requirements when no competitive, rate, or regulatory-impairment issues exist.

With respect to the NOPR's proposal to eliminate the 45-day time frame for Commission action, however, Southern contends that lengthening the process moves in the wrong direction, since other agencies have managed to keep pace despite having received increasing merger applications. Although Southern did not propose a specific alternative time frame, it did propose that the Commission continue its reform aimed at accelerating section 203 review.

Commission Conclusion

Upon review of the comments submitted, the Commission adopts the revised filing requirements set forth in the NOPR regarding basic information, with minor modifications. We are eliminating the 45-day time frame for Commission action, which is not a requirement under the statute, because it is no longer feasible. While old § 33.10 stated that the Commission will ordinarily need 45 days in which to act on merger applications, most merger applications filed today raise numerous complex issues that require more time for analysis and public comment. However, the Commission remains committed to the goal of issuing an initial order within 150 days of receiving a completed application. Indeed, since the Policy Statement, the average processing time for merger applications has been 117 days. Furthermore, we are typically processing uncontested non-merger applications within 60 days of filing and are typically processing protested non-merger applications within 90 days of filing, on average. We intend to continue this practice.

Also, the Exhibit H filing requirements are now reflected in new § 33.2(f). Although we are not revising these filing requirements, we take this opportunity to clarify that all section 203 filings must include a copy of all contracts pertaining to the proposed disposition and/or such other agreements (in final or, if not available, in draft form) and must identify: (1) All relevant parties to the transaction and their roles in the transaction (*e.g.,* as seller, purchaser, lessor, lessee, operator); (2) the jurisdictional facilities that are being disposed of and/or acquired, directly or indirectly; and (3) all terms and conditions of the proposed disposition that pertain to the ownership, leasing, control of, or operation of jurisdictional facilities. If contracts pertaining to the section 203 disposition have not been finalized at the time of filing, or, in the case of intra-corporate transactions, if applicants claim there will be no contracts associated with the disposition, applicants may submit a draft contract, a term sheet, a letter of intent or a memorandum of understanding to satisfy the § 33.2(f) filing requirement. However, in such instances, we will require that in the transmittal letter accompanying the application, counsel for applicants certify that, to the best of their knowledge, the final agreements will reflect the terms and conditions contained in the draft agreements in all material respects.

In response to comments, such as those expressed by FTC Staff, that the Commission should expand its data requirements, the Final Rule modifies § 33.2(c)—description of the applicant—to require a description of the applicant's business activities, corporate affiliations, officers in common with other parties associated with the transactions either directly or indirectly,[16] and jurisdictional transactions. Also, pursuant to § 33.2(c)(3), we will now require that organizational charts be filed showing

[14] Policy Statement at pp. 30,125–26 (we no longer consider the reasonableness of purchase price as a factor; rather, it is subsumed within the effect on rates factor). This information is used for purchase accounting purposes.

[15] Supplementing the application with orders from other regulatory bodies will not normally delay the processing of an application.

[16] This information is needed so that we can determine the existence of interlocking directorates.

the position within the corporate structure of each applicant in its corporate family, including all parent companies and all energy affiliates and subsidiaries (those companies which provide electric products or inputs to electric products). In § 33.2(c)(2) we will require applicants to list all energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and energy affiliate is engaged.

Revised § 33.2(c)(4) now requires each applicant to provide a description of all joint ventures, strategic alliances, tolling arrangements [17] or other business arrangements. In light of Order No. 2000, this section also requires a description of transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing.

We recognize that not all applications require the same amount of information (regarding applicants' organizational structure and business arrangements and activities, for example) to allow the Commission to evaluate whether the transaction is consistent with the public interest. Applicants may request waiver of specific sections accompanied by support for why they believe we do not need such information. For example, as to the requirement of revised § 33.2(c)(3) to provide organizational charts, an applicant can seek waiver of this requirement based upon a demonstration that the proposed transaction does not affect the corporate structure of any party to the transaction.

The Final Rule also modifies revised *§ 33.6—Form of notice*—to require that the form of notice be filed in a specified format, or template (as set forth in this section), to simplify this responsibility of applicants. Finally, the Rule revises § 33.8 to require applicants to submit eight copies of their application (instead of the five proposed in the NOPR) to aid our processing of applications.

With regard to the proper notice period for section 203 filings, in the Merger Policy Statement the Commission stated that it would routinely provide for a 60-day comment period for merger filings to allow potential intervenors sufficient time to analyze the filing.[18] The Commission has generally noticed section 203 filings other than mergers for considerably less time than 60 days. However, our experience with section 203 filings since the issuance of the Merger Policy Statement indicates that our policy on noticing should be altered somewhat. First, we have found that merger applications that do not require the filing of a competitive analysis screen (as provided in § 33.3) or a vertical competitive analysis (as provided in § 33.4) are generally not as complex (and thus not as difficult to analyze) as other section 203 filings, and thus a notice period of less than 60 days is adequate. Second, we have found that some section 203 filings that do not involve mergers are of such significance and complexity that either a competitive analysis screen or a vertical competitive analysis is nevertheless required, and that a 60-day comment period is appropriate to allow potential intervenors adequate time to analyze these applications. Thus, we have found that the primary determinant for a longer notice period (*i.e.,* 60 days) is not whether the filing is a merger, but whether the filing contains a competitive analysis screen or a vertical competitive analysis. Thus, we revise our policy on noticing section 203 filings to provide that any such filings containing either a competitive analysis screen or a vertical competitive analysis will generally be noticed for 60 days, while all other filings (including mergers not requiring a competitive analysis screen or a vertical competitive analysis) will generally be noticed for less than 60 days.

B. Revised Filing Requirements Applicable to Merger Filings

1. Applicability

As we explained in the preamble of the NOPR, the following filing requirements (codified in the revised §§ 33.3 and 33.4) apply to corporate transactions in which the applicant proposes either to: (a) Transfer control of jurisdictional facilities to another entity, whether the transfer of control is effectuated, directly or indirectly, by merger, consolidation or other means; or (b) acquire control over the jurisdictional facilities of another entity, whether the transfer of control is effectuated, directly or indirectly, by merger, consolidation or other means.[19] For any such corporate transaction that results in a single entity obtaining ownership or control, directly or indirectly, over generating facilities of unaffiliated parties, the applicant must file certain additional information, described below. If the merger transaction involves a horizontal combination of facilities that results in a single corporate entity obtaining ownership or control over generating facilities of unaffiliated parties, the applicant must file the information set forth in § 33.3. If the merger transaction involves a vertical combination of facilities resulting in a single corporate entity obtaining ownership or control over previously unaffiliated businesses that provide electricity products, or inputs to electricity products, the applicant must file the information set forth in § 33.4.[20]

2. Data and Format

The Commission must have the ability to perform, within a reasonable time, an independent verification of the horizontal or vertical competitive analysis presented in the application. To do so, we (and intervenors) must have the data underlying the analysis in a useful format. Thus, we are requiring that the data needed to perform the competitive analysis, and any additional data used, be filed electronically.[21] Specific data requirements for the various components of the competitive analysis are discussed below.

The Commission must be able to determine whether a merger is consistent with the public interest based on the data and analysis provided. When a proposed vertical merger requires further evaluation, the Commission will determine what procedures are appropriate.[22] One value of the screen process is that some mergers may be quickly approved if the evidence as to the lack of effect on competition is convincing and verifiable and the merger is otherwise found to be

[17] For example, under a tolling arrangement, a gas supplier would receive the output of a gas-fired generator as payment for the gas it supplies to the generator. If the gas supplier is the only supplier to that generator, then the gas supplier could effectively control the generator.

[18] Policy Statement at p. 30,119.

[19] Policy Statement, p. 30,113. *See also,* Duke Power Company and PanEnergy Corporation, 79 FERC ¶ 61,236 (1997) (*Duke*); NorAm Energy Services, Inc., 80 FERC ¶ 61,120 at 61,379 and n.13 (1997) (*NorAm*); Morgan Stanley Capital Group Inc., *et al.*, 79 FERC ¶ 61,109 at 61,503–04 (1997) (*Morgan Stanley*); and Boston Edison Company and BEC Energy, 80 FERC ¶ 61,274 (1997).

[20] We noted in *Enova* that a merger of jurisdictional facilities can be effected by a change in control over a public utility's facilities. Public utilities (or their parent companies) can effect a merger by combining their businesses through the formation of a new holding company that will own or control, either directly or indirectly, previously unaffiliated entities. *See Enova*, 79 FERC ¶ 61,107 at 61,491–96 (1997).

[21] The electronic filing requirements are set forth in § 33.8 of the revised regulations.

[22] In the NOPR, the Commission recognized that certain data required for our analysis may not be available to applicants. When this is the case, the Commission proposed that applicants make their best efforts to provide accurate substitute data, as well as corroborating data to validate the results of the analysis. This is not to say that all such evidence will be accepted without challenge or verification.

consistent with the public interest. The screen process may also be useful in narrowing issues that may require further analysis. This can be especially helpful to intervenors. In addition, the screen process is useful to suggest possible mitigation measures if there is a potential competitive concern.

Comments

We note that some commenters suggest specific minimum data to be included in the merger filing requirements, some already specified by name in the NOPR, and others to be gathered depending on case-specific facts and circumstances.

Commission Conclusion

Upon review of the comments submitted, the Commission adopts the revised filing requirements set forth in the NOPR regarding data and format without any modifications. The Commission must be flexible when evaluating section 203 applications and must be able to obtain any information necessary to determine that an application is consistent with the public interest. Therefore, we will not attempt to construct a specific, exhaustive list of data that must be included in each applicant's filing.

IV. Effect on Competition

The Commission's objective in analyzing a proposed merger's effect on competition is to determine whether the merger will result in higher prices or reduced output in electricity markets. This may occur if the merged firm is able to exercise market power, either alone or in coordination with other firms. The filing requirements proposed in the NOPR are consistent with Appendix A to the Policy Statement, and address anticompetitive concerns in a predictable and expedited fashion.

In Appendix A to our Policy Statement, we outlined a standard analytic framework for evaluating mergers, a horizontal competitive analysis screen (horizontal screen) designed to allow the Commission to quickly identify proposed mergers that are unlikely to present competitive concerns. Since the Policy Statement and NOPR were issued, we have gained considerable and valuable experience analyzing horizontal and vertical mergers and are now establishing filing requirements regarding the data needed for the analytic framework and the horizontal screen. In §§ 33.3 and 33.4, the NOPR set forth filing requirements to enable the Commission to have the necessary Appendix A information.

The Commission emphasized in the NOPR that the horizontal screen is not meant to be a definitive test of the likely competitive effects of a proposed merger. Instead, it is intended to provide a standard, generally conservative check to allow the Commission, applicants and intervenors to quickly identify mergers that are unlikely to present competitive problems. The horizontal screen approach allows applicants, intervenors and the Commission to have a common starting point from which to evaluate proposed mergers. Failing the initial screen does not necessarily mean the Commission will reject the merger. Rather, it means only that the Commission must take a closer look at the competitive impacts of the proposed merger.

When a proposed merger fails the horizontal screen, the Commission will determine what procedures are appropriate. The Commission recognizes that these procedures should not delay the processing of mergers unnecessarily, and in most cases we may expedite this processing. In the NOPR, we solicited comments on alternative procedures for investigating mergers that do not pass the initial horizontal screen.

The Commission recognizes the need for balance between the benefits of standardization regarding how proposed mergers will be evaluated and the need for flexibility, given the changing nature of the electric power industry and the likely evolution of analytic techniques and capabilities. The Commission solicited comments on whether the proposed approach strikes the proper balance between standardization and flexibility.

Comments

Commenters address a number of points regarding the Commission's proposed analytic requirements (generally, proposed §§ 33.3 and 33.4) . Most of these comments focus on the type of information the Commission proposed to obtain from merger applicants, as well as the proposed procedures for obtaining and processing such information. For example, citing recent experience in the *AEP/CSW* merger proceeding,[23] APPA/TAPS argue the Commission should reject obviously deficient filings. They urge that promulgation of the merger filing requirements be accompanied by substantial initial review for compliance.

Missouri Commission argues the Commission errs when it proposes to rely on the applicants' analyses of potential adverse competitive effects without doing its own independent analysis or providing intervenors with the information they need to conduct their own independent analyses. The Commission, Missouri Commission concludes, should not depend on applicants for data collection and analysis, because applicants inherently have a self-interest in merger approval.

The FTC Staff echos these concerns and recommends the Commission expand its data requirements in order to more closely match the Guidelines. It further contends the competitive effects of horizontal and vertical mergers are best analyzed with documents, interviews and data from a variety of sources that go beyond the scope of the information proposed in the NOPR.[24] In the FTC Staff's view, depending upon a merging firm to supply its own analysis may not produce reliable information. Therefore, assessments from third parties will be important. For example, merger applicants' analysis of their ability to raise rivals' costs or their data approximations about other firms will be subjective and subject to error and bias. NASUCA raises similar concerns, arguing the Commission has an independent obligation to obtain the facts. It believes that merger applicants should bear the risk of information unavailability and that the Commission should not approve mergers without sufficient supporting information.

WEPCO notes that under the Hart-Scott-Rodino approach to consideration of mergers by the antitrust agencies, there is substantial interaction between agency staff and interested parties that has better promoted understanding of merger-related problems. WEPCO suggests that one way to improve the communication among Commission staff, applicants and intervenors, given the quasi-judicial functions of the Commission and its *ex parte* restrictions, would be for staff to prepare a report summarizing its preliminary findings; merger applicants and other interested parties could comment upon that report. Staff would then revise its conclusions as appropriate to take into account any

[23] American Electric Power Co. and Central and South West Corp., 85 FERC ¶ 61,201; *reh'g denied*, 87 FERC ¶ 61,274 (1999) (*AEP/CSW*).

[24] Among the information the FTC Staff suggests: internal documents of the merging parties; third-party documents, including documents from industry trade associations; depositions of applicants and third-party executives and consultants; history of previous antitrust cases; financial analysts' reports; consultants' reports on competitive conditions in the industry; documents and interviews with executives of failed entrants, prospective entrants and fringe firms; filings about competitive conditions made with other government agencies; and documents and interviews with suppliers and customers.

new information developed in the comment process.

Several commenters express concern that applicants provide full disclosure of the required data. APPA/TAPS cautions that despite the fact that filing requirements focus on the past, current, and near future, they cannot accurately capture the dynamic changes in the not-so-near future. Full disclosure of all information that may bear on future competitive activities and changes, such as retail competition, is vital to the screening process.[25]

NRECA recommends a two-track merger review policy to foster flexibility. It suggest fast-track review of mergers of small and medium-sized utilities that would not adversely affect competition in a relevant regional market and that could enhance regional competition by creating a stronger, more viable competitor. NRECA believes that such a two-track review process would allow the Commission to more effectively scrutinize proposed ''mega-mergers'' where the Commission's horizontal screen indicates the potential to create or exacerbate market dominance.

Finally, APPA/TAPS cautions against applying the institutional framework and processes for reviewing ordinary rate filings to evaluating mergers. They state that the analysis produced by the filing requirements will not yield a reliable answer to the fundamental question of the effect of a merger on future competitive markets. They therefore urge the Commission not to follow a mechanistic approach to evaluating mergers.

Commission Conclusion

In response to concerns regarding deficient filings, we note that this agency has used procedures such as staff deficiency letters to obtain additional information from merger applicants.[26] Nothing precludes use of this or other procedures in the future to address deficient applications.

While we acknowledge Missouri Commission and the FTC Staff's concerns that the proposed filing requirements place the Commission in a position of relying on merger applicants' potentially biased analysis, the Commission can generally obtain the types of information these commenters describe or communicate with merger applicants pre-or post-filing (through, *e.g.*, a technical conference) regarding competitive concerns or the results of preliminary analysis.[27] For example, in Sierra Pacific we proposed a technical conference as an appropriate avenue of communication among Commission staff, applicants and intervenors.[28] In addition, the intervention process itself allows other market participants to raise concerns.

We note that our regulations require that all data, assumptions, techniques and conclusions in applicants' analyses be accompanied by supporting documentation. Indeed, the revised regulations explain in detail the type of information applicants must file, for use both by the Commission and by intervenors, to confirm applicants' results. Moreover, the Commission has required, in many instances, full disclosure of merger applicants' activities. The Commission will continue to use all means available to ensure that merger applications are complete, accurate, and free from bias. In regard to complete applications, we note that if changes that would affect the analysis occur after the date a filing is made with the Commission, but before final Commission action, the applicant must supplement its application promptly, describing such changes and explaining their effect.

Currently, § 33.4 of the Commission's regulations provides that ''the Commission may require additional information when it appears to be pertinent in a particular case.'' In the NOPR, the Commission proposed that its authority to require the submission of such additional information be delegated to the Director of the Office of Electric Power Regulation or his designee, under a new § 33.10. No commenters opposed this proposed action, and it is hereby adopted with the clarification that the ''Director of the Office of Markets, Tariffs and Rates'' is substituted for the ''Director of the Office of Electric Power Regulation'' to make this section consistent with the Commission's recent internal reorganization.

In response to NRECA's suggestion that the Commission adopt a two-track system for reviewing mergers of small/medium and large utilities, we note that the size of a merger does not indicate the level of competitive concern it may raise. Mergers of small, adjacent utilities in transmission constrained regions, for example, can raise competitive concerns, just as can ''mega-mergers.'' We believe the filing requirements proposed in the NOPR are sufficient to produce the information and analysis necessary to evaluate small and large mergers alike. Our experience has been that mergers that do not pose competitive problems will be quickly identified. Therefore, we do not see the need to distinguish between mergers of small/medium and large utilities.

Below we discuss the background, public comments and our conclusions regarding the more specific information necessary to perform the competitive analysis.

V. Horizontal Screen Analysis

The Guidelines set out the following five steps for analyzing the competitive effects of proposed mergers: (1) Analyze whether the merger would significantly increase concentration; (2) analyze whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects; (3) analyze whether entry would mitigate the adverse effects of the merger; (4) analyze whether the merger would result in efficiency gains not achievable by other means; and (5) analyze whether, absent the merger, either party would likely fail, causing its assets to exit the market.[29]

The competitive analysis screen [30] focuses on the first step: whether the merger would significantly increase concentration in relevant markets. Concentration statistics indicate whether a merger may have adverse competitive effects, but they are not the end of the analysis. We note that in many cases, the Commission has moved quickly beyond market concentration statistics in evaluating the competitive effects of proposed mergers. For example, in *Commonwealth Edison Company and PECO Energy Company,* the Commission found that despite high concentration statistics in the Commonwealth Edison Company (ComEd) destination market, ComEd would not be able to influence market price since most of its capacity was nuclear, which is difficult to ramp up or

[25] APPA/TAPS notes that strategic alliances should be disclosed and treated as mergers where their terms could have horizontal or vertical competitive effects. Also, to evaluate whether a proposed merger is likely to harm competition by placing additional costs on competitors, merging companies should be required to disclose existing ''reserve sharing,'' pooling arrangements and contractual or other commitments in order to continue those arrangements post-merger.

[26] *See e.g.*, UtiliCorp United Inc. and St. Joseph Light & Power Co. and UtiliCorp United Inc. and Empire District Electric Co., 92 FERC ¶ 61,067 (2000) (*Utilicorp/St. Joseph*), *AEP/CSW*; Allegheny Energy, Inc. and DQE, Inc., 84 FERC ¶ 61,223 (1998) (APS/Duquesne).

[27] It is important to note that our statutory authority in retrieving information pursuant to a section 203 investigation is adjudicatory in nature; adequate public notice, public participation and administrative due process are required.

[28] Sierra Pacific Power Co., Nevada Power Co. and Portland General Electric Co., 92 FERC ¶ 61,069 (2000).

[29] Policy Statement at p. 30,118.

[30] These specific filing requirements are set forth in § 33.3 of the revised regulations.

down in order to withhold output. In addition, the market demand fell within the flat portion of the supply curve for most hours of the year, so withholding output would not significantly affect price.[31]

If applicants' competitive analysis screen indicates that the merger would significantly increase concentration, applicants must either address the other steps in the Guidelines or propose measures that would mitigate the adverse competitive effects of the proposed merger.[32] If applicants propose mitigation measures, the screen analysis should also take into account, to the extent possible, the effect of these remedies on market concentration.

The competitive analysis screen is made up of four steps: (1) Identify the products sold by the merging firms; (2) identify the customers affected by the merger; (3) identify the suppliers in the market; and (4) analyze the merger's effect on concentration. Below we discuss the filing requirements for each step.

A. Relevant Products

Background

Applicants must identify the wholesale electricity products sold by the merging firms. At a minimum, such products include non-firm energy, short-term capacity (or firm energy), and long-term capacity. Products should be grouped together when they are reasonable substitutes for each other from the buyer's perspective. Supply and demand conditions for particular electricity products may vary substantially over time and, if so, the analysis should take this into account. Periods with similar supply and demand conditions should be aggregated. Thus, applicants must define and describe all products sold by the firms, explain and support the market conditions and groupings, and provide all data relied upon for product definition.

In the NOPR, we stated that as restructuring in the wholesale and retail electricity markets progresses, short-term markets appear to be growing in importance. We sought comments on the assessment of long-term capacity markets in merger analysis.

The delivered price test, which we require applicants to use to identify potential suppliers in a market, focuses on the ability of suppliers to deliver energy to relevant markets as measured by their short-term variable costs. However, there is no good measure for long-term capacity prices *per se.* Therefore, we sought comments on the appropriate analytic framework for evaluating long-term capacity products.

Comments

As discussed in greater detail in later sections, commenters offer a number of insights and suggestions regarding the scope of the Commission's merger analysis pertaining to retail competition. The major area in the proposed filing requirements where this subject arises is in the definition of relevant products. As we noted earlier, for example, the Missouri Commission argues that the emphasis on products should include retail markets, since unbundling will blur the traditional distinction between wholesale and retail electricity products. NASUCA suggests the Commission modify its screen to encompass the following product markets: Wholesale sales, wholesale purchases, retail sales, retail purchases, existing generation, new generation, ancillary services related to generation and ancillary services related to transmission.

The FTC Staff argues that unbundling could increase product differentiation, which may alter the degree of substitutability between products and may affect product market definitions. They also state that because electricity cannot be stored in large quantities and supply and demand conditions within short time intervals may be independent of each other, there may be a need to define electricity sales during individual hours as separate product markets, each of which may have a different geographic market associated with it. Thus, FTC Staff recommends the Commission consider techniques for examining the degree of linkage between different electricity product markets (*e.g.*, electricity sold on an hourly basis).

WEPCO states that since electricity is not purchased to be consumed in a specific hour, (*e.g.*, off peak, on peak, summer, winter, and shoulder months), but it purchased and consumed over the course of a year in a stable and predictable pattern, the relevant product market for competitive analysis should be electricity consumed over the course of a year, not electricity consumed in a single time period. Thus, WEPCO believes that guidance is needed from the Commission concerning how we will aggregate and evaluate multi-period analyses.

Commission Conclusion

We agree with NASUCA, Missouri Commission and FTC Staff that unbundling and retail competition will affect relevant product definitions. The Commission recognized this possibility in the Policy Statement when we stated that non-firm energy, short-term capacity, and long-term capacity are products that should, at a minimum, be evaluated by a merger applicant. Recognizing that energy companies are entering new product markets and that the effect of a merger could be to eliminate one of the merged companies as a perceived potential competitor in such new product markets,[33] we will also require applicants to identify product markets in which they may be reasonably perceived as potential competitors. We do not see the need at this time, however, to require merger applicants to separately identify and define various retail products or to define certain additional products, with the exception of ancillary services.

We base this conclusion on two reasons. First, it is important to define relevant products from the perspective of the consumer, *i.e.*, including in a product group those products considered by the consumer to be good substitutes. NASUCA's suggested product definitions do not do this. For example, we do not see how wholesale sales versus wholesale purchases warrant definition as separate relevant products from the consumer's perspective. Moreover, given this approach to defining relevant products, we disagree with WEPCO that electricity consumed over the course of the year should be defined as a relevant product. We note in response to the FTC Staff's comments that we require separate relevant products be defined for distinct market conditions. These market conditions can encompass greater or fewer numbers of hours during the year, depending on the specifics of the case. To facilitate accurate energy product definition when market conditions vary, however, we will require merger applicants to use load level, as opposed to time of day. This is a minor modification to what was proposed in the NOPR. When time periods are lengthy, distinct market conditions that occur within a particular time period can go unevaluated. We note that many merger applicants routinely define relevant energy products using load level.

Second, the Commission made it clear in the Policy Statement and the NOPR that it stood ready to evaluate the effect

[31] Commonwealth Edison Company and PECO Energy Company, 91 FERC ¶ 61,036 (2000) (*PECO/ComEd*).

[32] The specific filing requirements for applicants addressing mitigation measures and additional factors are set forth in § 33.3(e) and § 33.3(f), respectively.

[33] *See* below note 77.

of a merger on retail competition if a state lacks authority under state law and asks us to do so. The NOPR noted that restructuring in the electric industry, *i.e.*, retail access, could affect presumptions that are necessary to complete our screen analysis. In such cases we will require merger applicants to provide analyses that will also be useful in assessing the effect of a merger on retail electricity markets. For example, the existing filing requirements require applicants to provide information on their native load obligations.

We believe, however, that some ancillary services, specifically spinning and non-spinning reserves and imbalance energy—if they are sold by the merging firms—must be added to the list of relevant products to be analyzed by merger applicants. The movement toward RTOs has led to the development of bid-based ancillary service markets, especially imbalance energy markets. Participation in these markets is greater now than in the past, and we expect such participation to expand as markets develop. We note that ancillary service market conditions are not directly captured by capacity measures for either non-firm energy or short-term capacity. While high levels of or changes in concentration in energy markets may be good general indicators of the structure of or changes in the structure of ancillary service markets, the technical requirements for providing these services may be more stringent than those for providing energy, and there may be fewer potential suppliers than in energy markets. Given the foregoing, we will, therefore, require that merger applicants assess the effects of proposed mergers in the reserve and imbalance energy markets. We recognize that ancillary service and imbalance energy markets are not fully developed in some regions of the country. As RTOs are formed, we expect that these markets will become more fully developed.[34] We, therefore, require applicants to analyze reserves and imbalance energy as separate products when the necessary data are available. If not, applicants must explain why the markets cannot or should not be analyzed.

B. Relevant Geographic Markets

Below we discuss the methods of identifying the relevant geographic markets as set forth in the NOPR.

Background

Customers (Destination Markets): As discussed in the Policy Statement, identifying the customers likely to be affected by a merger is one part of defining the geographic scope of the relevant market. At a minimum, affected customers include all entities that are directly interconnected to any of the applicants or that have purchased wholesale electricity from any of the applicants in the past two years.[35] The Commission solicited comments in the NOPR on whether two years was the appropriate period of purchases for deciding to include purchasers as affected customers. Customers considered to be affected by the merger and included in the analysis are referred to as ''destination markets.''

To simplify the analysis, customers that have the same supply alternatives, as identified in the competitive analysis screen, can be aggregated into a single destination market. The Commission has accepted this approach in a number of merger filings. For example, in *Atlantic City/Delmarva,* the Commission found acceptable the treatment of PJM as a single destination market since customers in PJM trade largely with the same set of suppliers. The same is true of mergers occurring within the New England and New York ISOs (*e.g.,* ConEd/NU and CMP/NYSEG).[36] We proposed that applicants be required to provide all data used in determining the affected customers.

Comments

FTC Staff remarks that the list of affected customers produced by the delivered price test provides only a limited picture of the customers who may be harmed by a merger. It notes that in their own experience, suppliers' pricing decisions focus on attracting new customers that often are not on lists of current customers. FTC Staff also contends that if a potential anticompetitive effect of a merger involves increased coordination among suppliers, the harmful effects of the acquisition may go beyond customers of the merging parties to include many customers supplied by non-merging companies. Lastly, it explains that if a potential anticompetitive effect of a merger is slower entry into new geographic markets, the affected consumers will (by definition) be those located where the parties have not previously done business. Without information about these potential customers, the FTC Staff states, merger analysis may underestimate present and future demand elasticity or incentives to innovate. Therefore, FTC Staff recommends the Commission broaden its concept of affected customers to include potential customers and customers of third-party suppliers in the market(s) served by the merging parties.

Because transmission constraints may bind during peak demand periods, the FTC Staff suggests that more care be taken when defining geographic markets. In an ISO that is divided into zones, such as California, during off-peak hours the relevant geographic market could be the entire ISO, while during the peak hours each zone could be a relevant geographic market. Since, in general, the broader the geographic area the less concentrated the market, applicants should justify the use of a broad geographic market with evidence that the market definition remains viable during peak times. If not, the FTC Staff suggests, the market definitions should be narrowed for peak periods.

Commission Conclusion

The Commission generally shares the FTC Staff's broad concept of customers which are potentially affected by a proposed merger. We believe that the existing requirement to identify as destination markets those entities directly and indirectly interconnected with the merging companies, in addition to entities with which the merging companies trade, partially captures the universe of potential customers affected by the merger. We also believe the intervention process is, in itself, a generally reliable way for customers potentially affected by a merger to identify themselves and raise their particular concerns. However, as discussed below under Section V.H, we recognize that energy companies are increasingly entering new geographic markets and that the presence of a perceived potential competitor in a geographic market can have a salutary effect on that market. If a merger could eliminate such a salutary effect by removing one of the merging companies as a perceived potential competitor in such markets, we will also require applicants to identify any geographic markets in which they may be reasonably perceived as potential competitors.

The Commission also agrees with FTC's point regarding the effect of transmission constraints on the scope of geographic markets. We believe that the market analysis adopted here captures this effect, because the use of different

[34] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes and Regulations at 31,135 (1999).

[35] Policy Statement at p. 30,130.

[36] Consolidated Edison, Inc. and Northeast Utilities, 92 FERC ¶ 61,225 (2000), *reh'g denied,* 92 FERC ¶ 61,014 (2000) (*ConEd/NU*) and Energy East Corp. and CMP Group, 91 FERC ¶ 61,001 (2000) (*Energy East/CMP*).

load levels in defining relevant products narrows the scope of relevant geographic markets by constraining transmission where appropriate. Thus, markets analyzed during peak load levels are often smaller because transmission links are full at those load levels.

C. Suppliers (Delivered Price Test)

Background

Defining the relevant geographic market also requires identifying the sellers that can compete to supply a relevant product. Suppliers must be able to reach the destination markets both economically and physically. To determine the suppliers that can economically supply a destination market, the NOPR proposed that applicants conduct a delivered price test. In the delivered price test, suppliers can economically serve destination markets to the extent that they have generating capacity that can serve the market at a price [37] no more than five percent above the pre-merger market price.[38] Applicants would then adjust suppliers' capacity consistent with the physical transmission capacity available to reach the destination market.

In some cases, potential suppliers may be parties to mergers that have been announced but not yet consummated. The Commission sought comments on whether those suppliers should be treated in the competitive analysis screen as if their mergers have been consummated or whether they should be treated as independent rivals.

In addition, the NOPR proposed that a supplier's ability to economically serve a destination market be measured by generating capacity controlled by the supplier rather than historical sales data. We also discussed in the NOPR two generating capacity measures we believed appropriate for the competitive analysis screen: economic capacity (EC) [39] and available economic capacity (AEC).

[37] The price would include payments for transmission and ancillary services needed to deliver the power.

[38] Policy Statement at pp. 30,130–31.

[39] The starting point for calculating economic capacity is the supplier's own generation capacity with low enough variable costs that energy can be delivered to a market (after paying all necessary transmission and ancillary service costs, including losses) at a price that is five percent or less above the pre-merger market price. Capacity must be decreased to reflect any portion committed to long-term firm sales; and it must be increased to reflect any portion acquired by long-term firm purchases. In addition, any capacity under the operational control of a party other than the owner must be attributed to the party for whose economic benefit the related unit is operated. The result of these calculations is the supplier's ''economic capacity.''

Comments

A number of commenters respond generally to the Commission's proposed filing requirements governing the definition of relevant geographic markets using the delivered price test. EEI believes that the screen is valuable in identifying potential problems early in the process. However, EEI and Southern advocate a change in the Commission's Appendix A analysis from the individual destination markets defined using the delivered price test to a single geographic market defined by using the hypothetical monopolist test, as suggested by the DOJ/FTC Merger Guidelines.[40] EEI claims that the hypothetical monopolist test will produce a more accurate picture of the markets a merger would affect. It argues that a major flaw in the delivered price test is that it assumes that price discrimination can occur even though such discrimination would be unlawful and the Commission's open access rules go far to prevent it.

EEI explains that the delivered price test does not consider the role of power marketers and arbitrage in preventing potential price discrimination. In contrast, the hypothetical monopolist test assumes that there is no price discrimination, absent other factors. EEI argues that the Commission's claim that the delivered price test produces conservative results is not persuasive because the delivered price test produces erroneous results by over (or understating) the potential effects of a merger on the market.

Commission Conclusions

In response to general concerns regarding the delivered price test, we reiterate that the competitive analysis screen is intended to provide a standard, generally conservative check to allow the quick identification of mergers that are unlikely to present competitive problems, and is not meant to be a definitive test of the competitive effects of a proposed merger. Therefore, we will continue to apply the delivered price test set forth in the Policy Statement in future merger cases. This does not preclude applicants or other parties from filing alternative analyses, including those using the price increase (*i.e.,* hypothetical monopolist) test for defining relevant markets, as suggested by EEI, nor does it preclude the Commission from performing analyses of alternative scenarios to test the sensitivity of results to key assumptions, as suggested by the FTC Staff.

We also will adopt our proposal regarding suppliers' ability to reach a market. Since merger analysis should be as forward-looking as practicable, suppliers' ability to economically serve a destination market seems better measured by the generating capacity they control than by historical sales data. This is because information about current or past sellers may not identify those participants whose generation capacity could discipline future price increases. Moreover, data on sales made in a past environment characterized by monopoly and cost-based rates or pancaked transmission rates and other grid management inefficiencies may not be a good indicator of how firms will behave in an environment increasingly characterized by generation competition and RTOs.[41] In addition, the competitive analysis screen filed by applicants must use both EC and AEC measures to gauge supplier presence.

As we stated above, the competitive analysis screen is intended to be a forward-looking measure. Therefore we believe it is appropriate that applicants provide sensitivity analyses of their results to the assumption that announced, but not consummated, mergers are completed. Such information would be useful in assessing, for example, the appropriateness of behavioral versus structural remedies. Applicants may perform sensitivity analyses which incorporate different scenarios regarding announced, but not consummated mergers and should explain why certain scenarios might be more appropriate.

Discussed in more detail below are the general data requirements that are needed to determine the suppliers in the relevant market for a competitive analysis screen, a summary of the comments on these requirements, and our conclusions.

Generating Capacity and Variable Cost

Background

The NOPR explained that the basic determinants of a supplier's presence in a market are the generating capacity the supplier controls and the variable costs associated with that capacity. For each

[40] Southern comments that actual market conditions reflecting any legal constraints on market participation should be considered, but only if such constraints are actually being adhered to.

[41] Baltimore Gas & Electric Company and Potomac Electric Power Company, Opinion No. 412, 76 FERC ¶ 61,111 (1996), 79 FERC ¶ 61,027 at 61,120–21 (1997) (*BG&E/PEPCO*). This is not to say, however, that sales data are irrelevant to market analysis. If sales data indicate that certain participants actually have been able to reach the market in the past, it is appropriate to consider whether they are likely candiates to be included in the market in the future. *BG&E/PEPCO* at n.72. It is for this reason that we will require a ''trade data check'' as part of the competitive analysis screen.

potential supplier to a relevant market, applicants must file the publicly available generation capability and variable cost data for each generating plant or unit. Aggregate plant level data from plants with units that burn different fuels can result in average plant variable costs that inaccurately state the units' economic ability to sell into a market.[42] For such plants, cost data at the unit level are preferable to cost data at the plant level, and applicants must file disaggregated plant data to the extent it is publicly available.

Comments and Commission Conclusion

No specific comments were received on this issue. We adopt in this Final Rule the proposals set forth in the NOPR.

Purchase and Sales Data Adjustments

Background

In the NOPR, we stated that data regarding the long-term purchases and sales of suppliers should be filed with the application. These data would, to the extent available, include the buyer, the seller, the contract duration, the degree of interruptibility, the quantity (MW), and the capacity and energy charges. Applicants must explicitly show any adjustments made to suppliers' capacity due to long-term contracts.

Comments and Commission Conclusion

No specific comments were received on this issue. We note that our experience with both horizontal and vertical mergers since the NOPR was issued indicates that case-specific circumstances are important in determining if the inclusion of purchased power in a supplier's capacity is reasonable. For example, if purchased power could be withheld by the merged firm to drive up market prices, including such purchases in a supplier's capacity would be appropriate. Therefore, we will require that purchase and sales data include information on whether the terms and conditions of purchase contracts confer operational control over generation resources to the purchaser. In addition, we will also require information on the remaining life of contracts and any evergreen or rollover provisions. If the terms and conditions of purchase contracts do confer operational control over the generation resources to the purchaser and the merger raises competitive concerns, this information could be useful, for example, in determining the type and duration of remedies. If contracts do not confer operational control over the generation resources to the purchaser then the capacity should be attributed to the seller.

Native Load Commitment Adjustments

Background

Along with EC, the other measure of supplier presence relevant to the competitive analysis screen is AEC. AEC is calculated as EC less the capacity needed to serve native load customers.[43] In the NOPR, we proposed that applicants include this measure in their screen analysis for all suppliers that have native load commitments. The Commission sought comments on the role of native load and the weight the AEC measure should be given in market analyses.

Comments

A number of commenters raised issues regarding native load obligations. For example, WEPCO asserts that retail choice reduces native load obligations and correspondingly increases AEC and available transmission capability (ATC) in wholesale bulk power markets. It states that under full retail competition with complete release of native load, AEC converges to EC. In states where retail competition is not on the horizon, AEC still provides useful information. WEPCO, therefore, suggests the Commission consider the value of AEC on a case-by-case basis.

NASUCA and Missouri Commission argue that since retail choice is quickly expanding throughout the country, the Commission should not rely on AEC. With retail choice comes the release of some or all of a utility's native load obligation. In addition, under retail choice, rates for native load customers that had been regulated become market-based, increasing the ability of anticompetitive behavior to raise rates. NASUCA and Missouri Commission also point out that the Commission noted in the NOPR that the assumption that a utility uses its least-cost generation to serve its native load may no longer hold under retail competition, to whatever extent it currently holds.

The FTC Staff argues the impending release of native load requirements has different competitive implications for a merger before and after retail choice programs are enacted. It suggests the Commission look at two scenarios: one considering those suppliers that are constrained by native load obligations (representing the near-term) and one considering those that are not (representing the long-term). EEI recommends the Commission require applicants to perform tests of the sensitivity of their delivered price test results to changes in assumptions regarding retail choice.

Commission Conclusions

We adopt in this Rule the proposals set forth in the NOPR. The Commission is cognizant that the term ''native load'' has a specific meaning. However, as electricity markets change, the meaning of native load may change too, such that it is reasonable to consider it as part of a broader set of contractual commitments. We agree with commenters regarding the need to recognize the implications of retail access for evaluating AEC and EC results. The Commission has raised this issue in a number of merger cases.[44] As a result of these concerns, we encourage merger applicants who rely on estimates of retail access to provide sensitivity tests of their results showing how varying degrees of retail competition would affect concentration statistics. These tests could include, for example, scenarios with differing geographic market definitions if retail competition is in varying stages of development in the markets affected by the merger. Applicants must describe and indicate the status of retail access programs in the markets affected by their proposed merger.

Where applicants are using the AEC measure in the competitive analysis screen, they must file historical data regarding hourly native load commitments. Applicants must provide these data for the most recent two years or the most recent available time period or explain why such data are not relevant, given the status of retail access.[45] The specific filing requirements for reporting native load commitments are set out in § 33.3(d)(4) of the revised regulations.

Other Adjustments to Supplier Capacity

Background

In the NOPR, we stated that other adjustments to reflect a supplier's competitive ability to serve a destination market may be appropriate, and that applicants must support any such adjustments with adequate

[42] We have noted such discrepancies in data received from applicants in our analysis in a prior case. See *BG&E/PEPCO*, pp. 61,119–120.

[43] Native load customers are the wholesale and retail power customers on whose behalf a utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate an electric system.

[44] *See, e.g., Utilicorp/St. Joseph.*

[45] Hourly data are available in electronic format from the FERC Form 714, Annual Electric Control and Planning Area Report.

analyses and set out all data and assumptions used. There may be instances where a generation supplier's ability to participate in markets is limited by statutory restrictions. For example, the tax-exempt status of municipal generators can be jeopardized if they sell more than a certain percentage of their tax-exempt financed generation to private utilities. Another example is the statutory geographic limitations placed on the Tennessee Valley Authority's wholesale sales activities. We noted that failing to recognize such restrictions could overstate the ability of such generation suppliers to compete and thereby to discipline prices in a market.

Another adjustment discussed in the NOPR that may be needed to accurately represent a supplier's ability to sell into markets is to adjust for reserve requirements for reliability or other reasons. Generation capacity that must be held in reserve is not available to be sold into markets on a firm basis to respond to price increases, and therefore should not be attributed to the supplier in the competitive analysis screen.

Comments

WEPCO argues that by ignoring alternative markets in which suppliers could sell, the delivered price test overstates the amount of power that seeks to reach each destination market. This can cause mergers of no competitive significance to fail the screen and competitively significant mergers to pass it. Therefore, realistic assessment of mergers requires that the opportunity costs of sales in other areas be taken into account.

Commission Conclusions

We adopt in this Rule the proposals set forth in the NOPR. We agree with WEPCO that it may be useful in certain cases to account for suppliers' opportunity costs in defining relevant geographic markets. We note that ongoing modeling efforts are attempting to incorporate this capability and we encourage merger applicants and industry experts to continue such efforts. If merger applicants wish to provide market analyses that reflects suppliers' opportunity costs, we will consider such analyses as a supplement to the required analysis. Applicants must describe any statutory restrictions that may apply to generation suppliers included in their competitive screen analyses, reserve requirements and how those requirements affect the availability of each unit included in the competitive analysis, and any other adjustments to supplier capacity.

Transmission Prices, Ancillary Service Prices and Loss Factors

Background

The NOPR emphasized that an important factor in determining whether capacity can serve a destination market is the transmission costs that would be incurred in delivering generation services to a destination market. The Policy Statement recognizes that prices paid for transmission and ancillary services should be added to the variable costs of a supplier's capacity.[46] For purposes of competitive analysis screen, applicants must use the maximum tariff rates in public utilities' open access tariffs on file with the Commission. The NOPR pointed out that where a non-public utility's transmission system is involved, the maximum tariff rates under any non-jurisdictional (NJ) open access reciprocity tariff should be used. If an NJ tariff for an entity has not been submitted to the Commission, the NOPR proposed that applicants use their best efforts to obtain or estimate transmission and ancillary services rates.[47] In cases where the transmission and ancillary service prices used in a competitive analysis screen are not found in publicly available tariffs or rate schedules, applicants may need to estimate these parameters. The assumptions underlying such estimates must be adequately supported.

Consistent with the generally conservative nature of the competitive analysis screen, the NOPR proposed to require that the transmission prices used be the maximum tariff rates in the open access tariffs. Applicants may present, in addition to the required screen analysis, a separate analysis using lower discounted transmission rates, if applicants can demonstrate that discounted lower rates have been generally available and that discounting is likely to be available in the future.[48]

Restructuring efforts in some regions may result in transmission pricing regimes that depart from traditional system-specific, average cost prices. Accordingly, the NOPR proposed that the transmission pricing used in the competitive analysis screen and the data presented in the filing reflect the transmission pricing regime in effect in the relevant geographic markets.

The NOPR proposed that for each transmission system that a supplier must use to deliver energy to a relevant destination market, applicants must provide data, including the transmission provider's name, the firm and non-firm point-to-point rates, the ancillary services rates, the loss factors, and an estimate of the cost of supplying energy losses. Where tariff rates that are expressed as $/MW are converted to $/MWH, applicants must explain the conversion. The NOPR proposed that applicants must also explain how suppliers are assigned transmission contract paths to the destination markets.

Comments and Commission Conclusion

No specific comments were received on this issue. We adopt in this Final Rule the proposals set forth in the NOPR. The specific filing requirements for transmission rate and loss factor data are set out in § 33.3(d)(5) of the revised regulations.

Market Prices

Background

As discussed in the Policy Statement, a supplier's capacity may be included in a relevant market, for purposes of the competitive analysis screen, if it can be delivered into the market at a price that is no more than 5 percent above the pre-merger market price.[49] We therefore proposed that the application support market prices for each relevant product and geographic market. Significant market conditions included, for example, those characterized by periods of high (peak) or low (off-peak) demand and by transmission constraints.[50]

As discussed in the Policy Statement, the Commission does not believe that all electricity markets have matured sufficiently to exhibit single market-clearing prices for various products. Therefore, in the NOPR we sought comments on appropriate criteria for determining when surrogate measures are needed. We did not require a specific method for estimating market prices. However, we stated that the results must be supported and consistent with what one would expect in a competitive market. For example, we would expect prices to vary little from customer to customer in the same region during similar demand conditions (if there are no transmission constraints), but we would expect prices to vary between peak and off-peak

[46] Policy statement at pp. 30,131.

[47] Rates for non-public utilities that are members of a regional body such as an RTO may be found in the RTO tariff. Such information may also be available on a non-public utility's OASIS.

[48] For public utilities (and non-public utilities with OASIS), evidence should be available from OASIS archives. OASIS database transaction data must be retained and made available upon request for three years after they were first posted. *See* 18 CFR 37.7.

[49] Policy Statement at p. 30,131.

[50] *Atlantic City/Delmarva,* p. 61,408.

periods.[51] Where results are at odds with those that would be expected under competitive market conditions, we proposed that applicants explain such results. We also encouraged applicants to use more than one approach to estimating market prices in order to demonstrate that the market price estimates are valid. To support the market price estimates, we proposed that applicants must file any cost or sales data relied upon in estimating the price, as well as an explanation of how the data were used to determine the estimates.

Comments

The FTC Staff raises a number of issues concerning the choice of representative prices and their effect on geographic market size. First, it argues that geographic markets expand when prices are high because it becomes feasible for distant electricity suppliers to provide economically competitive substitutes. However, it points out that transmission congestion during these peak periods would reduce the relevant market. Similarly, it states the transmission pricing regime can affect the scope of the relevant market. It proposes the Commission require merger applicants to provide a sensitivity analysis for various pricing regimes as well as for the representative prices used in the competitive inquiry.

WEPCO raises similar concerns. WEPCO believes that because prices in adjacent markets tend toward uniformity, a single regional market emerges in place of several localized ones. The adjustment WEPCO proposes is for the Commission to require a competitive analysis over the larger area in which price formation takes place.

Several commenters raise related issues concerning the determination of representative prices. For example, the FTC Staff, Missouri Commission and NASUCA contend that either competitive prices or likely future prices are more appropriate choices for baseline market power analyses than the pre-merger market prices. Similarly, the Missouri Commission and NASUCA want the Commission to require merger applicants to account for the effect of any residual retail market power by adjusting the base price and/or 5 percent differential used to determine alternative supply sources in order to reflect the absence of full competition in the pre-merger markets.

[51] Ohio Edison Company, *et al.,* 80 FERC ¶ 61,039 at 61,105–6 (1997) (FirstEnergy).

Commission Conclusions

We adopt in this Rule the proposals set forth in the NOPR. In response to commenters' concerns, we agree that markets can be regional, as opposed to local, under certain circumstances. The Commission has often received merger filings that employ identical price estimates for several destination markets.[52] Where there are no transmission constraints between markets and where there is a demonstrated lack of price discrimination, similar prices across destination markets generally indicate a larger, single geographic market.[53] Therefore, even though the delivered price test initially requires the identification of separate relevant markets associated with each affected customer, applicants should explain and support the use of a broader regional market if they choose to use such a market definition.

The Commission also believes that selecting representative market prices in a sensible manner is among the most critical components of merger analysis when determining players in the relevant market. We note that since the NOPR was issued, the availability of price data has increased. However, there will likely be instances where actual price data may be limited or unavailable. We are open to the use of estimated prices, provided that they are accurate representations of prevailing market conditions. The accuracy of such prices must be supported by available data. In cases where applicants provide analysis based on price ranges, we note that results that differ from those based on actual reported prices will be inadequate unless evidence is provided to the contrary.[54] Given the importance of prices to the outcome of market definition, we will require applicants to perform sensitivity analysis of alternative prices on the predicted competitive effects. This provides us with an additional measure of confidence and assurance that results are reliable.

The specific filing requirements for market price data are set out in § 33.3(d)(6) of the revised regulations.

[52] Examples include *Energy East/CMP, ConEd/NU,* and NiSource Inc. and Columbia Energy Group, 92 FERC ¶ 61,068 (2000) (*NiSource/Columbia Energy*).

[53] When transmission constraints are binding, identical prices in adjacent markets may still occur, although this is unlikely.

[54] *See, CP&L/Florida Progress,* in which prices based on system lambda and observed ''Market Power Week'' data were different.

D. Transmission Capability

In the NOPR, we explained that the capacity of suppliers determined to be economic in a relevant destination market (that is, capacity that can be delivered at a cost that is no more than 5 percent above the pre-merger market price) may be included in a relevant market, for purposes of the competitive analysis screen, only to the extent that transmission capability is available to the supplier. Such capacity is calculated as the sum of ATC and any firm transmission rights held by the supplier that are not committed to long-term transactions. Thus, the extent of transmission capability and the allocation of the rights to use that capability are important factors in determining a supplier's ability to physically reach a market.

This section discusses the general data and analyses proposed in the NOPR to allow us independently to estimate each economic supplier's ability to reach a market.

Physical Capability

Background

In the NOPR, we proposed that for those suppliers able to economically serve a relevant destination market, applicants must present data on transmission capability for each transmission system a supplier must use to deliver the energy, to the extent available. These data would include total transfer capability (TTC) and firm ATC and must be consistent with values posted on the OASIS. We were, however, concerned that the sum of transfer capabilities reported on OASIS sites could exceed the simultaneous transfer capability. We therefore proposed the transmission capability be reported as simultaneous transfer capability to avoid attributing more generating capacity to a market than could actually reach it under actual operating conditions.

The NOPR also proposed that applicants identify the hours when transmission constraints have been binding and the levels at which they were binding. We proposed the application also present data regarding whether and how the proposed merger would change line loadings and the resulting effect on transfer capability. To the extent possible, applicants should provide maps showing the location of transmission facilities where binding constraints currently occur. The Commission asked for comments regarding what determines when a binding constraint is significant enough to cause competitive concern. For

example, is there a minimum number of hours that a constraint must last?

The Commission understood that applicants must depend on publicly available information regarding transmission capability for systems other than their own, and that some of the information discussed above may not be generally available for all systems. The NOPR proposed that applicants file the best available data regarding systems other than their own. However, all of the data discussed in this section regarding the applicant's systems must be filed, even if it is not available for all other systems. An accurate representation of transmission conditions on systems, where the merger's effects are likely to be greatest is important.

Comments and Commission Conclusions

No specific comments were received on this issue. The Commission understands that simultaneous transfer capability data may not be generally available. Where this is the case, applicants must use the best data available to estimate transfer capability. For example, the analysis should not add together the capabilities of several interfaces if the simultaneous transfer capability into a market is less than the sum capabilities of the individual interfaces.[55] The Commission expects that the development of RTOs should result in the availability of transmission data that is more accurate because RTOs will conduct regional transmission analyses that account for factors such as loop flows and simultaneous transfers in a coordinated fashion.

In addition, we recognize the importance of flow-based modeling in terms of both the existing transmission network and any proposed integration between the merging parties. We note that the North American Electric Reliability Council has developed data that greatly facilitate the use of flow-based models.[56] As the industry continues to develop flow-based models, we encourage applicants to adopt these methods for estimating transmission availability.[57]

The specific filing requirements for transmission capability data are set out in § 33.3(d)(7) of the revised regulations.

Firm Transmission Rights

Background

The NOPR suggested that transmission capacity along transmission paths between suppliers and destination markets that is reserved under a long-term firm transmission contract by suppliers should be presumed to be available to other suppliers on a non-firm basis unless the capacity is committed to a long-term power transaction. We proposed that applicants identify such transmission capability and provide supporting information, including the FERC rate schedule numbers if the transmission provider is a public utility.

Comments

The New York Commission contends that along with long-term transmission rights, transmission congestion contracts (TCCs) need to be considered in analyzing market power. The New York Commission further states that a market participant who owns generation in a higher-priced market along with a substantial amount of transmission rights or TCCs could increase the value of its TCCs by withholding generation, thereby causing the market price to rise.

In addition, WEPCO expresses concern that confusion may arise as to whether a long-term transmission reservation is associated with a long-term transaction in light of ongoing industry restructuring.

Commission Conclusions

We adopt the approach in the NOPR as to the information that applicants must present regarding the treatment of firm transmission rights (FTRs). We agree with the New York Commission regarding the importance of TCCs and therefore will also require applicants to file the same information about TCCs that we have required for FTRs. Since FTRs and TCCs confer either physical or financial rights, we clarify that applicants must provide information in either case.[58] This information would be useful in doing a competitive effects analysis.

In response to WEPCO's concern that long-term transmission reservations may not be associated with long-term transactions, we note that our approach is to assume that unused long-term transmission capacity will be made available to other suppliers through secondary transmission markets or other means. Consistent with Order 888 and the pro forma tariff, such unused capacity will be treated as available on a short term (non-firm) basis.

The specific filing requirements for firm transmission rights data are set out in § 33.3(d)(9) of the revised regulations.

Allocation of Transmission Capability

Background

The NOPR proposed that transmission capability that is not subject to existing firm reservations by others may be presumed for purposes of the competitive analysis screen to be available to economic suppliers to reach the relevant markets. However, this would not be the case for transmission capability on interfaces that would become internal to the merged firm after the merger. If, after a merger, the merged firm would have either generating resources or load on both sides of the interface, and would have ownership or entitlement interests in the interface on both sides, the transmission capability on that interface could be used to serve native load. Since native load generally would have a higher reservation priority than most third party uses, it could preclude access by other suppliers to that interface.[59] The Commission proposed that, for purposes of the competitive analysis screen, it would be inappropriate to allocate to competing sellers unreserved capability over interfaces internal to the merged company unless the applicants demonstrate that: (a) The merged company would not have adequate economic generating capacity to use the interface capability fully, (b) the applicants have committed that the portion of the interface capability allocated to third parties will in fact be available to such parties, or (c) alternate suppliers have purchased the transmission capability on a long-term basis.[60] Any allocation of internal transfer capability to third parties consistent with the above guidance would have to be adequately explained and supported.

In many cases, multiple suppliers could be subject to the same transmission path limitation to reach the same market, and the sum of their economic generation capacity could exceed the transmission capability available to them. Where this situation arises, we proposed the competitive

[55] *First Energy,* p. 61,104.

[56] *See, e.g.,* North American Electric Reliability Council's web page (http://www.nerc.com.filez/ptdf/html) on use of Power Transfer Distribution Factors and the Interchange Distribution Calculator which can be used to identify interchange transactions contributing to a constraint.

[57] *See, e.g.,* Northern States Power and New Centuries, Inc., 91 FERC ¶ 61,157 (2000) *reh'g pending (NSP/New Century),* where the applicants modeled the effect of the integration on transmission availability.

[58] In either case, physical or financial, withholding generation could increase the value of FTRs and TCCs. On the other hand, competing firms that hold FTRs may have incentives that offset this effect. Applicants are encouraged to provide such information.

[59] Wisconsin Electric Power Company, *et al.* (*Primergy*), 79 ¶ 61,158 at 61,694 (1997), and *FirstEnergy* at 61,107.

[60] *FirstEnergy,* pp. 61,103–04.

analysis screen allocate the transmission capability among the suppliers' generating capacity. There are a number of methods for accomplishing this. We proposed that applicants describe and support the method used and show the resulting transfer capability allocation. The Commission did not propose a single method, but invited comments on the merits of various approaches to allocating transmission capability in the competitive analysis screen.

Comments

Commenters generally agree with the Commission's policy of allocating transmission capacity over post-merger internal interfaces to the merging parties absent a showing that the capacity is generally available to others. However, NARUC and the Ohio Commission argue the Commission should also examine external interfaces, which can be affected by factors such as seasonal increases in native load. FTC Staff and NRECA believe the Commission should examine short-term constraints carefully, pointing to the potentially large effects on the market. Some commenters also advocate further information filing requirements, such as load flow studies (including relevant details necessary to replicate the results) and five years of historical data on planned and unplanned outages and their effect on reactive power. The Ohio Commission echoes these sentiments, recommending that applicants, in addition to submitting historical data on plant outages, should detail the effects of these outages on reactive power.

WEPCO argues that under the delivered price test, transmission capacity allocation becomes vitally important and thus becomes an unnecessary centerpiece of controversy. According to WEPCO, the delivered price test relies heavily on relatively arbitrary procedures for allocating power competing in destination markets to suppliers, because in most cases, there is not enough information to specify which generators serve which markets. Therefore, WEPCO explains, rules must be designed for assigning shares of power flows to generation owners. An example would be to assign the output of a local generator to the local market up to the limit of the control area load.

Commission Conclusions

We adopt in this Rule the NOPR requirements relating to the determination of transmission capability. We note that transmission allocation is a key issue in defining relevant geographic markets in the analysis of constrained networks. However, it is not clear to what arbitrary procedures for allocating transmission capability in the delivered price test WEPCO is referring. In the NOPR, we did not propose a particular method of allocating limited transmission capability among suppliers of economic generation capacity in the same market, but invited comments on various approaches. A variety of allocation methods are possible, and the Commission has acknowledged that certain methods provide more accurate and reasonable results than others (*i.e.,* pro-rata as opposed to least-cost). Applicants must describe and support the method used and show the resulting transfer capability allocation. We will not at this time specify particular rules or require a single method for transmission allocation. However, since transmission allocation is a key parameter in defining relevant markets, there are benefits to sensitivity analysis using different allocation methods. We encourage such analysis.

Commenters generally agree with our proposed treatment of transmission capability on interfaces that would become internal to the merged firm after the merger. We also have addressed this issue in several merger cases.[61] We therefore adopt the NOPR's proposals regarding the treatment of these interfaces (*i.e.,* applicants may allocate sellers unreserved capacity over their internal interfaces if (1) the merged company would not have adequate economic generating capacity to use the interface capability fully; (2) applicants have committed that the portion of the interface capability allocated to third parties will in fact be available to such parties; or (3) alternate suppliers have purchased the transmission capability on a long-term basis). External interfaces, as NARUC and the Ohio Commission also point out, should be examined, and addressed in applicants' analysis.

We agree with FTC Staff and NRECA that short-term constraints can have large effects, and we intend to continue to examine them. In response to commenters' suggestions regarding further data requirements, we believe that such information might be useful in some cases, but should not be required for all merger applications. If further information is needed in a particular case to accurately determine transmission capability, we will require it.

[61] *See e.g., APS/Duquesne,* Louisville Gas and Electric Co., Kentucky Utilities Co., and PowerGen plc, 91 FERC ¶ 61,321 (2000).

Summary of Supplier Presence

Background

The NOPR proposed requiring applicants to provide a table summarizing supplier presence in each of the relevant destination markets. The table would include the market designation, the product, the name of each supplier, and the amount of generation capacity each supplier can economically deliver to the market after accounting for available transmission capability. This summary information is particularly useful in identifying the suppliers in a relevant market and their relative market shares.

Comments and Commission Conclusions

No specific comments were received on this issue. We adopt the NOPR's proposal. The specific filing requirements for this summary of supplier presence are set out in § 33.3(d)(9) of the revised regulations.

E. Historical Data

Background

In the NOPR, we proposed that applicants file historical data that can be used to corroborate the results of the competitive analysis screen. We explained that we understood that applicants depend on publicly available information for the majority of the screen analysis and that some detailed data may not be generally available for all market participants. However, relevant data regarding applicants' own transactions and transmission systems are available to the applicants and we proposed that this data must be filed. Below we discuss the types of relevant data set forth in the NOPR.

Trade data: The Commission proposed that applicants file actual trade data regarding sales and purchases in which applicants participated for the most recent two years for which data are available. These data will be used to corroborate the suppliers identified as participating in the relevant destination market and the extent of their participation. We proposed that applicants must provide an explanation of any significant differences between the results obtained by the competitive analysis screen and recent trade patterns. We also proposed that applicants file trade data regarding all electricity sales and purchases in which they participated, identifying the seller, the buyer, the characteristics of the product traded and the price.

Transmission service data: The competitive analysis screen evaluates the ability of suppliers to reach relevant

markets economically and physically. One of the critical components of the screen analysis is the availability of transmission capacity. We proposed that applicants must file estimates of ATC and TTC used in the competitive analysis screen, as well as historical transmission service information, which is valuable to corroborate the results. Specifically, the Commission proposed that applicants submit a description of all instances in the two years preceding the application in which transmission service on systems owned or operated by the applicants had been denied, curtailed or interrupted. This description must, to the extent such data are available from OASIS sources, identify the requestor, the type, quantity and duration of service requested, the affected transmission path, the period of time covered by the service requested, the applicants' response, the reasons for the denial and the reservations or other use anticipated by the applicants on the affected transmission path at the time of the request.

Comments and Commission's Conclusion

No specific comments were received on this issue. We, therefore, adopt the NOPR's proposal for historical trade and transmission service data. The specific filing requirements for this historical trade and transmission service data are set out in §§ 33.3(d)(11) and 33.3(d)(12).

F. Concentration Statistics and Related Matters

Background

Under the Policy Statement, the final step of the competitive analysis screen is to assess market concentration. Applicants must file pre- and post-merger market concentration statistics calculated in accordance with the preceding sections. Both HHIs and single-firm market share statistics must be presented.

The HHI statistics are compared with the thresholds given in the Guidelines.[62] If the thresholds are not exceeded, no further analysis need be provided in the application. If an adequately supported screen analysis shows that the horizontal merger would not significantly increase concentration, and there are no interventions raising substantial concerns regarding the merger's effect on competition that cannot be resolved on the basis of the written record, the Commission does not look further at the effect of the merger on competition. If, however, the HHI statistics exceed the thresholds, the applicants must either propose mitigation measures that would remedy the merger's potential adverse effects on competition or address the other DOJ/FTC merger analysis factors.

The NOPR solicited comment on the specific methods used to calculate market share and concentration statistics, especially the HHI.

Comments

NASUCA argues that benchmarks such as the HHI index used for the determination of market power should not be based on present industry structure and price levels because these do not fully reflect competitive forces. The New York Commission argues the HHI analysis is not effective for evaluating market power because the HHI may not reflect ''unilateral market power.'' Furthermore, the HHI does not provide accurate results for determining the financial resources available to the merged firm in relation to the financial resources available to current and potential competitors in the industry. Midwest ISO Participants contend that an HHI analysis is not necessary if the total generation market share of the merging entities is 20–25 percent of the total generation that can supply the territory of the ISO to which they belong or have committed to join.

APPA/Transmission Access Policy Study Group contends that recent experience in partially deregulated markets suggests that certain assumptions underlying the Commission's reliance on HHI statistics (*i.e.,* (a) a relatively homogeneous product market, (b) a geographic market that can be defined consistent with a variety of products, and (c) a set of competitors, none of whom is artificially advantaged or disadvantaged in the future) are frequently invalid. Along with WEPCO, it suggests the Commission consider various situations in which public utility mergers could take place (*e.g.,* stranded cost recovery, predatory pricing, and price discrimination).

Indiana Consumer Counselor argues that HHI statistics do not fully capture a merger's effect on the merged firm's incentive to withhold capacity from the market. It argues the Commission should look at the size of the merged firm relative to the total generation that can supply a specific destination market, as well as the amount of excess capacity in the market. If the excess capacity from other suppliers is greater than the merged firm's capacity, any attempt by the newly merged firm to withhold generation would be disciplined by the excess capacity of other suppliers. Otherwise the merged firm would have incentive to withhold capacity regardless of whether the HHI statistics indicate a screen violation.

Commission Conclusion

We recognize, as noted by commenters, that the HHI statistic is not a perfect or conclusive measure of a merger's competitive effect. While some commenters raise valid issues in regard to the HHI, we note that its usefulness is primarily as screening criteria. Should a proposed merger fail the screen, the Commission will look to additional factors in its determination of whether a proposed merger would adversely affect competition. Market participants should make the Commission aware of other factors because they are in a better position to identify those aspects of the market that are important to doing a competitive analysis. However, we also note that a violation of the Appendix A screen does not conclusively demonstrate that the horizontal aspect of a proposed merger would have anticompetitive consequences. If the screen is violated, the Commission will take a closer look at whether the merger would harm competition. If not, and no intervenors make a convincing case that the merger has anticompetitive effects despite passing the screen, the horizontal analysis stops there. The facts of each case (*e.g.,* market conditions, such as demand and supply elasticity, ease of entry and market rules, as well as technical conditions, such as the types of generation involved) determine whether the merger would harm competition. When there is a screen failure, applicants must provide evidence of relevant market conditions that indicate a lack of a competitive problem or they should propose mitigation.[63]

[62] The Policy Statement addresses three ranges of market concentration as described in the Guidelines: (1) An unconcentrated post-merger market—if the post-merger HHI is below 1000, regardless of the change in HHI the merger is unlikely to have adverse competitive effects; (2) a moderately concentrated post-merger market—if the post-merger HHI ranges from 1000 to 1800 and the change in HHI is greater than 100, the merger potentially raises significant competitive concerns; and (3) a highly concentrated post-merger market—if the post-merger HHI exceeds 1800 and the change in the HHI exceeds 50, the merger potentially raises significant competitive concerns; if the change in HHi exceeds 100, it is presumed that the merger is likely to create or enhance market power.

[63] Since the NOPR, we have had a significant number of cases where applicants have provided such evidence, and we encourage them to continue that practice. For example, in PECO/ComEd we noted that Applicants' screen failures occurred ''over a scattering of markets and time periods.'' 91 FERC ¶ 61,036 at 61,134. In *NSP/New Century,* Applicants attempted to isolate three potential sources of merger-related changes in concentration ''due to: (1) Combining NSP's and SPS's market

Continued

The specific filing requirements for concentration statistics are set out in § 33.3(c)(4) of the revised regulations.

G. Mitigation Measures and Analysis of Other Factors

Background

In the NOPR the Commission proposed that in lieu of addressing the additional factors that would lessen concerns regarding the adverse competitive effect of a proposed merger, applicants may propose mitigation measures. In these proposals applicants must be specific and demonstrate the proposed measures adequately mitigate any adverse effects of the merger. Where such measures are proposed, the application must also include, to the extent possible, a separate analysis demonstrating the effect of the proposal on market concentration.

Mitigation measures need not result in decreases in market concentration.[64] Where such other measures are proposed, the application must include an analysis demonstrating how the proposed measure will ensure that the merger will not adversely affect competition in markets where the screen analysis shows a significant adverse effect on concentration.

Where the competitive analysis screen yields concentration results that exceed the thresholds, but mitigation measures are not proposed, applicants must provide additional analysis. The Guidelines describe four additional factors to examine in situations where merger-induced concentration exceeds the specified thresholds.[65] Based on the Guidelines, the Commission proposed in the NOPR that applicants evaluate the following four factors if the results of the screen analysis show that the concentration thresholds are exceeded: (1) The potential adverse competitive effects of the merger; (2) whether entry by competitors can deter anticompetitive behavior or counteract adverse competitive effects; (3) the effects of efficiencies that could not be realized absent the merger; and (4) whether one or both of the merging firms is failing and, absent the merger, the failing firm's assets would exit the market. These factors can be used to determine if a merger raises significant competitive concerns and, if so, whether there are countervailing considerations such that the merger is still consistent with the public interest.

We proposed that the applicants' analysis of these additional factors be consistent with the standards discussed in the Guidelines. For example, the Guidelines require that in order to be considered an effective mitigating factor, entry must be timely, likely and sufficient in magnitude to deter or counteract the adverse competitive effects of concern.[66] The Guidelines suggest that entry must occur within two years of the merger to be considered timely, and that all phases of entry must occur within the two-year period, including planning, design, permitting, licensing and other approvals, construction and actual market impact.[67] We noted in the NOPR that given the current lead times for bringing new generation or transmission capacity on line, it is unlikely that entry can be a mitigating factor unless facilities are already in the planning or construction stages at the time of the application.[68]

Comments

Many commenters consider ISOs to be one means to mitigate market power concerns and barriers to market entry. They assert that ISOs support competitive electricity markets by offering: (1) Independent operation of the transmission grid, (2) expanded supply alternatives through the elimination of pancaked rates, (3) the ability to manage and eliminate transmission constraints, and (4) increased reliability. They further maintain that an ISO can simplify the analysis of a merger because the ISO can define the relevant market for screening purposes.

Industrial Consumers share the belief that large regional ISOs can mitigate market power. However, it asserts that effective competition in the electric industry cannot occur while small, single-state ISOs exist, so it urges the Commission to toughen ISO conditions.

APPA/TAPSG and the FTC Staff advocate structural remedies as mitigation measures, alleging that structural remedies are generally more effective and less costly to enforce than are behavioral remedies. Nonetheless, the FTC Staff acknowledges that there may be instances in which behavioral remedies, such as price caps, are appropriate. To ensure that a rate cap effectively reduces market power, the FTC Staff recommends the Commission require adjustments in rate caps over time to reflect anticipated changes in cost resulting from technological advancements.[69] NRECA advocates structural remedies only in extraordinary circumstances.[70] The Ohio Commission recommends the filing requirements request proposals for mitigation measures that consider factors such as the economic value of transmission reliability and alternatives to traditional power supply.

NARUC, as stated in its merger resolution, advocates disapproval or conditioning of proposed mergers that adversely affect generation competition. APPA/TAPSG recommends mandatory divestiture of generation when a merger would result in more than a *de minimis* increase in generation capacity concentration in a relevant market.

Some commenters further advocate conditioning merger approval on: (1) The applicants' recognition that the Commission has authority to reopen and/or impose additional conditions; (2) transmission owners comparable treatment of themselves and their customers; and (3) the applicants' compliance with conditions prior to consummation of the merger.

NASUCA, NARUC and the Ohio Commission urge the Commission to require horizontal merger applicants to propose a range of mitigation measures (*e.g.,* join an ISO,[71] behavioral rules, functional unbundling, structural

shares; (2) changes in NSP's or SPS's market share due to joining the [Midwest ISO] or integrating directly; and (3) changes in the composition of relevant markets resulting from either integration plan, but not related to changes in NSP's or SPS's market shares.'' 90 FERC ¶ 61,020 at 61,129. In PECO/ComEd, applicants argued that although the ComEd destination market was highly concentrated and the merger-related increase in concentration violated the Appendix A screen, they did not have the ability to withhold output because their generating units were almost entirely nuclear, making it difficult to ramp up or down. We agreed with this argument. In addition, we found that market conditions were not conducive to a profitable withholding strategy, since the relevant portion of the market supply curve was highly elastic for most hours of the year, so applicants had little incentive to withhold output.

[64] For example, certain behavioral measures—in contrast to structural remedies such as divestiture—do not transfer control over resources from the merged company to an existing or new market participant. In such cases, the market shares of the merging companies would not change and, therefore, the merger would not change market concentration.

[65] These factors are those discussed in steps two through five of the DOJ Guidelines.

[66] Guidelines, 57 FR at 41,561.

[67] *Id.* at 41,561–562.

[68] For example, we found in Primergy that timely entry would not occur and thus was not a mitigating factor to the anticompetitive effects of the proposed merger. 79 FERC ¶ 61,158 at 61,695–696.

[69] The FTC Staff comments that during periods of moderate inflation, a rate cap without an inflation adjustment may provide a rough substitute for a technology adjustment. The FTC Staff further says that in periods of deflation or substantial inflation, there would be greater reasons to differentiate the inflationary and technological effects on costs.

[70] NRECA defines extraordinary circumstances as including mergers above its moratorium threshold of 1,000,000 metered accounts, mergers of registered holding companies, and mergers of companies exhibiting excessive market power.

[71] Ohio Commission also suggests that the regulations require that any mitigation measure involving an ISO that does not meet the minimum ISO criteria should be co-terminus with existing reliability council boundaries.

separation, divestiture) if their competitive analysis screen reveals the existence of post-merger market power above acceptable levels or discloses transmission constraints or other barriers to market entry by rivals. Such proposals would balance the full costs and benefits of the value of reliability and practical engineering of the network.

Ohio Commission further wants the filing regulations to require merger applicants to explain how they will eliminate or reduce pancaked rates, both inside and outside of their merged territories.

WEPCO believes it is essential that applicants and intervenors know with specificity the Commission's requirements for both market power analysis and mitigation. WEPCO states that if requirements are not specified, applicants face second-guessing by intervenors or Commission staff on the grounds that some other form of analysis would produce different results. It is essential that questions about the data and methodology for performing the screen not become a basis for requiring hearings. Also, there needs to be guidance from the Commission that technical violations of the screen do not need to be mitigated if there is clear evidence that competition will not be injured.

Antitrust Institute argues the Commission should view with skepticism any claims that a public utility merger will improve efficiency, because experience shows that most mergers fail to achieve the expected level of benefits. It recommends that the filing requirements place more of a burden on applicants making efficiency arguments in support of a merger. Antitrust Institute wants applicants to specify any discount rate used to quantify any benefits specified, including the component intended to apply to the increased riskiness of distant projections compared to near-term projections. It also wants stand-alone cost estimates based on the assumption that all prudent and reasonable steps to operate efficiently would be undertaken by each of the merging parties continuing to act as individual firms. Finally, Antitrust Institute wants any claimed benefits that are derived from capacity deferrals to be shown in terms of the present value of delaying capital costs less increases in fuel costs implied by the postponements.

The Ohio Commission argues that merger savings should benefit jurisdictional ratepayers as well as shareholders and that applicants' proposed allocation of merger savings among wholesale and state-jurisdictional customers should be disclosed in the merger application.

Commission Conclusions

We believe the instructions on mitigation proposals as outlined above and in the NOPR will give the Commission the information it needs to analyze the impact of a proposed merger on the market, and we adopt them. As discussed above, these instructions include the requirement for further analysis demonstrating the effectiveness of proposed mitigation measures (regardless of whether they have a direct impact on concentration statistics). In addition, if concentration statistics exceed the thresholds and no mitigation proposals are made, applicants must provide analysis addressing the four additional factors described above.

Regarding the concern we expressed in the NOPR that entry at the generation and/or transmission level may take more than two years to occur, we clarify that in order for entry to be considered an effective mitigating factor, entry must occur no later than two years from the date the merger is consummated. This could mean, as we noted in the NOPR, that some stages of entry (*e.g.,* planning, approvals) must start before the merger is consummated.

We agree with commenters who generally recognize RTOs as beneficial in mitigation proposals.[72] RTOs can mitigate market power, eliminate rate pancaking and better manage grid congestion, thereby enlarging geographic markets. Our approval of some recent mergers recognized applicants' voluntary commitment to join Commission approved RTOs.[73]

We continue to believe that appropriate mitigation measures can alleviate concerns regarding a proposed merger's effect on the market. We do not believe that we should outline specific actions that applicants must take as mitigation if concentration statistics exceed the thresholds, as some commenters have suggested. As we discussed in the NOPR, the Policy Statement, and in many past merger orders, there are numerous mitigation measures that can be effective. However, the adequacy of specific mitigation proposals must still be investigated on a case-by-case basis.[74]

Applicants must analyze how proposed mitigation will be effective. In addition, they must demonstrate the proposed mitigation measures will continue to be effective unless Applicants can show that other developments will make continuing mitigation unnecessary. As we discussed in the Policy Statement, we do not intend to rely on post-merger review or on new remedies imposed after a merger is approved. Therefore, we will still entertain proposals by applicants to implement interim mitigation measures that would eliminate market power concerns during the period that it takes to put in place the long-term remedies necessary to address the anticompetitive effects of a proposed merger. Of course, the Commission can use its authority under section 203(b) of the FPA to further condition mergers if mitigation measures prove or become ineffective.

The specific filing requirements concerning mitigation measures are set out in § 33.3(e). The specific filing requirements for additional factors are set out in § 33.3(f) of the revised regulations.

H. Merger Applications That Are Exempt From Filing a Competitive Screen

Background

There are mergers where the filing of a full-fledged horizontal screen or vertical competitive analysis is not warranted because it is relatively easy to determine that they will not harm competition (*e.g.,* one of the merging parties operates entirely on the East Coast and the other merging party operates entirely on the West Coast). For example, in *Duke/PanEnergy* we found that even though applicants had not performed a complete Appendix A analysis, the generating facilities of PanEnergy are so small and are located at such a great distance from Duke Power Company's market that

[72] After the issuance of the NOPR, the Commission amended its regulations under the FPA to facilitate the formation of Regional Transmission Organizations (RTOs). We required each public utility that owns, operates, or controls facilities for the transmission of electric energy in interstate commerce to make certain filings with respect to forming and participating in an RTO. The Commission codified minimum characteristics and functions that a transmission entity must satisfy in order to be considered an RTO. *See* Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes and Regulations ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 90 FERC ¶ 61,201 (2000). The NOPR and comments received in response to the NOPR preceded Order No. 2000. Because RTO requirements are more stringent than those of independent system operators (ISOs), we believe that comments submitted regarding the market power mitigation properties of ISOs apply equally to RTOs.

[73] *See, e.g., CP&L/Florida Progress,* and *UtiliCorp/St. Joeseph.*

[74] In regard to comments on increased efficiency claims, we reiterate that the burden is on applicants to demonstate that claims of increased efficiencies are valid. We will not rely on unsupported claims as effective mitigation.

consolidating them is likely to have a negligible effect on market concentration.[75]

Similarly, some mergers that only incidentally involve public utilities would not require a full-fledged competitive analysis. An example is when major financial firms that have power marketing subsidiaries change their ownership structure in some way.

Therefore, with regard to horizontal mergers, a merger applicant need not provide the full competitive analysis screen if the applicant demonstrates the merging entities do not operate in the same geographic markets or, if they do, that the extent of such overlapping operation is *de minimis*. The Commission sought comments regarding the appropriate threshold for the *de minimis* test.

Comments

The FTC Staff suggests the Commission remove or restrict its proposed *de minimis* exception to the filing requirements for geographically noncontiguous operations. The Commission should consider the possibility that mergers of geographically noncontiguous operations will nonetheless create competition problems. The FTC Staff recognizes the appeal of ''safe harbor'' provisions, or what the Commission refers to as abbreviated filing requirements, since they reduce the regulatory burden where anticompetitive effects are especially unlikely. However, the presence of abbreviated filing requirements create strong incentives for companies to portray acquisitions in such a way as to qualify for abbreviated filing requirements. In the FTC Staff's experience, it is important to seek independent verification of the information used to qualify for abbreviated filing requirements.

The FTC Staff itself recognizes certain classes of transactions that are exempted from reporting because, based on the FTC Staff's experience, they are not likely to harm competition. But, where that cannot be determined, merging companies should submit a basic amount of information.

NRECA comments that the appropriate *de minimis* test is not merely the extent of geographic overlap. Noncontiguous horizontal mergers, it points out, can have substantial adverse effects on competition. NRECA lists the following examples: regulatory evasion, control of critical regional transmission interfaces, and other characteristics.

If one or more merger applicants controls a constrained transmission interface, NRECA states, the critical market may be a relatively small market area. Market dynamics are such that two non-contiguous merging companies could control generation resources on either side of a constraint and could use that control to their financial advantage. Absent such a constraint, NRECA states, geographic overlap is less relevant as a stand-alone determinant of potential market dominance in an open access market.

Sempra proposes that if an application meets certain conditions suitable for abbreviated filing requirements, the applicants would be entitled to a rebuttable presumption that the merger or disposition is consistent with the public interest and should receive approvals within 90 days of filing the application.

Finally, Missouri Commission notes that by proposing safe harbor treatment (*i.e.,* abbreviated filing requirements) of certain mergers, the NOPR anticipated that a merger could proceed to approval even without all the information it stated was required for its review. This, in its view, incorrectly shifts the burden of proof from applicants to intervenors, contrary to section 203 of the FPA. Missouri Commission concludes the Commission should ensure that merger applicants produce nothing short of the best and most complete data, that the data are subject to check, and that gaps in data and analysis are filled.

Commission Conclusion

We agree with commenters that the Commission must consider whether merger applications qualify for review under abbreviated filing requirements. There will be cases that seem to qualify, such as those where geographic market overlap among merging entities is minimal or non-existent, but which require further analysis. We are aware that even though merging firms might not currently compete in common geographic markets, one firm might reasonably be perceived as a potential competitor in a market in which the other firm competes.[76] Under these circumstances, the Commission would be unlikely to consider merger applications for review under the abbreviated filing requirements. However, we would not reach such a conclusion without examining the specifics of each case. Moreover, the Commission has demonstrated that it is concerned about cases that involve a vertical combination of generation and transmission assets even if there is little or no overlap between generation activities.[77] The Commission can also ensure that abbreviated filing requirements are appropriate by requesting additional information from the applicants when deemed necessary. As a result of the foregoing considerations, we will not require a merger applicant to provide the full competitive analysis screen if: (1) The applicant demonstrates that the merging entities do not currently operate in the same geographic markets, or if they do, that the extent of such overlapping operation is *de minimis*; and (2) no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.[78]

Furthermore, we will not require section 203 applicants to provide a competitive analysis under §§ 33.3 or 33.4 of the regulations if: (1) The application is a specific RTO filing that directly responds to Order No. 2000; (2) the transaction is simply an internal corporate reorganization; or (3) the transaction only involves a disposition of transmission facilities.[79] Our decision not to require RTO applications to provide a competitive analysis is consistent with our strong belief that participation in RTOs is pro-competitive. Moreover, the standards set forth in Order No. 2000 require

[75] Duke, 79 FERC at 62,037 (1997).

[76] A firm may exert a salutary influence on behavior in a market without actually competing in it. *See e.g., FTC* v. *Proctor & Gamble Co.* 386 U.S. 568 (1967); *U.S.* v. *Falstaff Brewing Corp.*, 410 U.S. 426 (1973).

[77] *See, e.g.,* AEP/CSW, NSP/New Century, and *CPL/Florida Progress.*

[78] We understand that, in responding to interventions raising concerns about perceived potential competition, applicants may find it necessary to submit data on their market strategies. We appreciate the commercial sensitivity of information pertaining to applicants' market strategies, and the concern applicants may have about possible disclosures of this information to competitors. Applicants are free to claim confidentiality for this information, we will presume that this information falls within the exemption from public disclosure under the Freedom of Information Act for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 18 CFR 388.107(d)(2000). If parties seek access to this information, and we determine that limited disclosure is necessary to satisfy the due process rights of intervenors to challenge relevant evidence relief upon by the applicants, we will allow such access to parties' attorneys and experts only under the terms of an appropriate protective order. *See, e.g.,* model protective order at www.ferc.fed.us/alj/index.html. Such a protective order would prevent broader dissemination or use of the sensitive information for business purposes or commercial advantage.

[79] We clarify that by exemption, we mean that an applicant need not tender a competitive analysis with its filing. If the Commission determines that a filing raises competitive issues nonetheless, the Commission will evaluate those issues and direct the applicant to submit any data that the Commission determines is necessary to satisfy its concerns.

extensive information from RTO applicants that we believe will demonstrate whether the proposal is in the public interest. It also has been our experience that anticompetitive effects are unlikely to arise with regard to internal corporate reorganizations or transactions that only involve the disposition of transmission facilities.

VI. Guidelines for Vertical Competitive Analysis

A. General Vertical Issues

Background

We noted in the Policy Statement that we intended to analyze mergers between public utilities and firms that provide inputs for electricity generation (''vertical'' mergers).[80] We also note that the same merger may have both horizontal and vertical aspects.

Since the Policy Statement was issued, the Commission has acted on a number of vertical mergers.[81] These mergers involved the combination of interests in electric generation and gas assets or the combination of interests in electric generation and transmission assets. The Commission has developed a basic approach for assessing whether a vertical merger is likely to adversely affect competition in electricity markets. This approach has been informed by the DOJ/FTC approach to evaluating vertical mergers and by the analytic framework described in the Policy Statement. In the NOPR, we proposed an analytic approach and the filing requirements to support it.

The Commission proposed to streamline this vertical analytic approach and establish abbreviated filing requirements and limitations on the scope of our review. This proposal would reduce the number of applications that will require a complete analysis of the vertical aspects of a proposed merger. For example, a merger cannot impair competition in ''downstream'' electricity markets if it involves an input supplier (the ''upstream'' merging firm) that sells: (1) An input that is used to produce a *de minimis* amount of the relevant product, or (2) no product into the downstream electricity geographic market. If such a showing is made, an applicant will not be required to file additional information regarding the vertical aspects of a proposed merger.

The NOPR discussed establishing filing requirements for the vertical competitive analysis that have counterparts in the horizontal screen analysis, such as defining relevant downstream geographic markets using a delivered price test. Filing requirements for other parts of the vertical analysis, such as defining upstream geographic markets, were set forth in more general terms. We solicited comments on both the reasonableness of the analytic approach and the adequacy of the information required.

Comments

EEI suggests circumstances in which a full competitive analysis is not required: where storage of the upstream product prevents the supplier from targeting price increases for specific seasonal periods; the price of the upstream product is constrained by substitutes; the upstream supplier supplies only minimal shares; or parties have no significant involvement in generation.

Commission Conclusion

As we said in the NOPR, there will be cases of vertical mergers in which a full vertical competitive analysis is not required. For example, as EEI states, and as we have concluded in previous merger cases, if applicants have no significant involvement in generation, the applicants might be able to demonstrate a lack of competitive harm without completing a full vertical competitive analysis.[82] In this final rule, the Commission establishes certain abbreviated filing requirements and limitations on the scope of our review with respect to vertical merger applications.[83] This should reduce the number of applications that will require a complete analysis of the vertical aspects of a proposed merger involving a jurisdictional public utility.

In cases where more complete information is necessary for the Commission to determine the competitive effects of a vertical merger, we are adopting a four-step analysis: (1) Define the relevant products traded by the upstream and downstream merging firms;[84] (2) define the relevant downstream and upstream geographic markets; (3) evaluate competitive conditions using market share and concentration HHI statistics in the respective geographic markets; and (4) evaluate the potential adverse effects of the proposed merger in these markets and, if appropriate, other factors that can counteract such effects, including ease of entry by competitors into either the upstream market or the downstream market and merger-related efficiencies.

B. Vertical Analytic Guidelines—Introduction

As discussed earlier, we are concerned as to whether mergers will adversely affect competition in electricity markets, which can result in higher prices or reduced output. Horizontal mergers can achieve this by eliminating a market competitor and allowing the exercise of market power by the newly merged firm. Vertical mergers do not directly eliminate a competitor, but may create or enhance the incentive and/or ability for the merged firm to adversely affect prices and output in the downstream electricity market and to discourage entry by new generators.[85] This effect can be brought about by: (1) Foreclosure/raising of rivals' costs; (2) facilitating coordination; and (3) regulatory evasion.[86]

Foreclosure/Raising Rivals' Costs

Background

A merger between an entity that owns downstream electric generation and one that supplies upstream inputs to electric generation to competitors of the downstream firm may create or enhance the incentive and/or ability for the upstream firm to restrict access to these inputs to downstream competitors. This can be accomplished through pricing, marketing and operational actions that raise the input costs of downstream competitors of the newly merged firm or by otherwise restricting such competitors' input supply.[87] Raising rivals' costs can also deter entry of rival generators in the downstream market.[88] A vertical merger can create or enhance the incentive and ability of the merged firm to adversely affect electricity prices or output in the downstream market by raising rivals' input costs if market power could be exercised in both the upstream and downstream geographic

[80] Policy Statement at p. 30,113.

[81] *See e.g., Enova, AEP/CSW,* Dominion/CNG, Long Island Lighting Co. 82 FERC ¶ 61,214, *reh'g denied*, 83 FERC ¶ 61,076 (1988) (*LILCO*), *NorAm*, Duke/PanEnery, PG&E Corporation and Valero Energy Corporation, 80 FERC ¶ 61,041 (1997) (PG&E/Valero); Destec Energy, Inc. and NGC Corporation, 79 FERC., ¶ 61,373 (1997) (Destec/NGC); Enron Corporation, 78 FERC & 61,179 (1997) Enron.

[82] *See*, Illinova Corporation and Dynergy Inc., 89 FERC ¶ 61,163 (1999).

[83] These specific filing requirements are set forth in § 33.4 of the revised regulations.

[84] There may be several relevant upstream input products (such as fuel, transportation and turbine manufacturers).

[85] Horizontal mergers may give rise to a higher market share for the merged entity and increase concentration in the market. Market share and concentration are not directly affected by a solely vertical merger.

[86] *See Enova*, 79 FERC ¶ 61,372 at 62,560.

[87] Foreclosure can also result from a vertical merger if the downstream merging firm refuses to purchase from input suppliers other than its upstream affiliate.

[88] *See, Enova*, 79 FERC ¶ 61,372 at 62,560.

markets. Under these circumstances, generators purchasing from the upstream merging firm might not be able to turn to alternative suppliers to avoid an increase in input prices. Similarly, customers of the merging downstream firm might not be able to turn to alternative electricity suppliers to avoid an increase in electricity prices. The Commission requested comments on the extent to which vertical mergers can result in foreclosure or ''raising rivals costs'' problems.

Comments

Several parties want to eliminate the need for a detailed vertical analysis once it becomes clear that merging firms lack the ability to raise rivals' costs. For example, EEI states that when a downstream firm has easy access to alternative suppliers of natural gas or a dual-fired generation facility has low-cost fuel oil alternatives, the upstream firm has no market power. Similarly, Southern points out that a large number of natural gas storage facilities can protect against a withholding of natural gas services by suppliers. In either case, the analysis should stop, since it is clearly demonstrated the merged party has no ability to raise rivals' costs, even if it has the incentive.

Commission Conclusion

The Commission is sensitive to the burden imposed on applicants and intervenors by the merger filing process, which is why it has proposed abbreviated filing requirements in certain cases where a merger is unlikely to adversely affect prices or output. Because the details of particular cases can differ considerably, the Commission has reviewed and will continue to review mergers on a case-by-case basis. This allows cases that will not adversely affect prices or output to be approved quickly. However, a well-supported quantitative analysis is required to provide evidence of a proposed merger's lack of competitive impact. This is especially necessary in cases where applicant sets forth mitigating circumstances. Furthermore, this avoids delays in examining mergers because we are less likely to need additional data after the application is filed. As a result, we adopt in this Rule the proposals set forth in the NOPR.

Facilitating Anticompetitive Coordination

Background

A vertical merger can facilitate anticompetitive coordination [89] in either the upstream or downstream markets if the merger either: (1) Creates or enhances the *ability* of competing firms to agree to raise prices or restrict output or (2) dampens the *incentive* for firms to compete aggressively on price or service. In addition, anticompetitive coordination can occur if information that would facilitate coordinated behavior is shared between the upstream firm and its customers, and there are substantial transactions between the upstream merging firm and non-affiliated customers.[90]

The Commission is aware that the mechanisms through which a vertical merger could facilitate anticompetitive coordination and the conditions under which such coordination would result in competitive harm are complex and subject to debate. We solicited comments on anticompetitive coordination and how, or if, it should be addressed in the analysis.

Comments

The FTC Staff suggests that since firms have little incentive to accurately estimate their own abilities to engage in anticompetitive conduct, their analyses should be validated independently. However, Southern states the Commission should not be concerned about anticompetitive conspiracies, since the Sherman Act already makes such anticompetitive behavior illegal. These statements were echoed by EEI, saying that true coordination problems occur in only limited circumstances and thus may not be worth our concern.

Commission Conclusion

We disagree with Southern's assertion that the Commission should not be concerned with anticompetitive coordination. We are statutorily required to protect the public interest, and the courts have held that our authority under the FPA carries with it the responsibility to consider anticompetitive effects of regulated aspects of utility operations, and to give reasoned consideration to the bearing of competition policy on jurisdictional matters.[91] Therefore, it is important to preserve the Commission's ability to collect information so it can evaluate the possibility of anticompetitive coordination. As a result, we adopt in this Rule the proposals set forth in the NOPR.

The Commission acknowledges the FTC Staff's concerns that incentives exist for applicants to understate their ability to engage in anticompetitive behavior. Similarly, we also recognize the tendency for intervenors to overstate the potential for anticompetitive behavior on the part of prospective merging parties. These are additional reasons why the Commission believes it is important to examine section 203 transactions on a case-by-case basis. This affords the opportunity to review competitive analyses presented by both sides and to make our decisions based on the best possible information and analysis.

Regulatory Evasion

Background

In the NOPR, the Commission solicited comments on the potential for vertical mergers to result in regulatory evasion. For example, after merging with an upstream input supplier, a downstream electric utility's input purchases would be ''internal'' to the firm. The merger, therefore, may create the incentive for the merging upstream input supplier to inflate the transfer prices of inputs sold to the downstream regulated utility if it can evade regulatory scrutiny. Profits would increase for the vertically-integrated firm, but would accrue to the unregulated affiliate. Higher electricity prices could result from such a strategy.

In the NOPR, we also solicited comments on our proposed treatment of mergers in which regulatory evasion is a concern and how ongoing changes in the industry, such as the development of regional transmission organizations and retail access, might affect our approach.

Comments

EEI argues the Commission should not be concerned about regulatory evasion because it is a retail issue. It states that in a deregulated wholesale power market regulatory evasion is not

[89] ''Anticompetitive coordination'' refers generally to the exercise of market power through the concurrence of other (non-merging) firms in the market or on coordinated responses by those firms. *See* supra note 9. We emphasize that in the electric utility industry, the terms ''coordination'' and ''Coordinating activities'' have specific meanings. For example, coordinating with other firms in downstream electricity markets in the creation of regional transmission organizations would not raise competitive concerns. The Commission has also long encouraged technical coordination in order to promote reliability.

[90] One example of potential anticompetitive coordination is the anticompetitive exchange of information. If the downstream merging firm obtains price quotes and other sensitive competitive information from other (non-merging) upstream suppliers it could transfer that information to its upstream merging partner. The exchange of such information among upstream input suppliers can be potentially useful in agreeing to raise prices or restrict output to all downstream customers.

[91] *See, e.g., Gulf States Utilities* v. *FPC*, 411 U.S. 747 (1973) *reh'g denied*, 412 U.S. 944 (1973); and *Alabama Power Co., et al.*, v. *FPC*, 511 F.2d 383 (DC Cir. (1974)).

an issue.[92] Where downstream prices are determined by the market, rather than cost-based regulation, the downstream firm cannot increase its profits by charging itself excessive transfer prices for inputs. Further, as various regions of the country implement regional transmission organizations, regional tariffs and retail access, regulatory evasion by the transmission provider will become more difficult. Thus, according to EEI, the potential for regulatory evasion is diminishing. Southern Company raises similar arguments.

However, NRECA remarks regulatory evasion will occur increasingly as merged utilities cover large numbers of states and encompass a wider scope in the energy industry and as merged companies seek the shelter of regulatory gaps.

NRECA comments the risk of regulatory evasion is not restricted to vertical mergers. NRECA explains the AEP and CSW merger illustrates opportunities for regulatory evasion that ''pit state regulators against the Commission.'' [93] It also believes that in the past, the Commission has deferred to state regulators to address retail market power issues, even where it is known that those states do not intend to inquire into the merger's possible adverse effects on competition. The Commission's policy, according to NRECA, is to avoid review of retail market effects, absent a direct plea from the state to do so. It asserts that this fails to satisfy the Commission's public interest mandate. NRECA also says that state regulators are unlikely to take the political risks associated with admitting a lack of authority or inviting the Commission into retail market analysis. Where the state lacks the interest or resources to review the competitive effects of mergers, or where the merger applicant has sufficient political clout to limit state review, the retail market effects of proposed mergers are essentially beyond any government review.

Where regulatory evasion is a concern and a merger fails the competitive analysis screen, NRECA favors conditioning approval of the merger on effective structural mitigation. It believes that it is critical, where the Commission decides to condition a merger on ISO participation, that the ISO be an established one, not one that is merely being discussed or proposed. Also, large mergers can create single companies that are larger than the proposed ISO in the relevant region, which could allow the merged company to use its position to control prices.

Commission Conclusion

As noted earlier, regulatory evasion can affect retail electricity prices. However, consistent with our position taken in the Policy Statement, the Commission does not intend to address regulatory evasion concerns that affect retail electricity prices unless a state lacks adequate authority to consider such matters and requests us to do so.[94] NRECA explains that certain mergers create opportunities for regulatory evasion of state authority. We maintain that the state commissions are the more appropriate forum to address these issues.

C. Merger Applications That Are Exempt From Filing a Full Vertical Analysis

Relevant Products (Inputs) Supplied by the Upstream Merging Firm Are Used To Produce a De Minimis Amount of the Relevant Downstream Products

Background

As discussed earlier, there are instances in which only minimal information and analysis would be necessary to confirm that a vertical merger poses no competitive concern. One such instance is when the upstream merging firm sells a product that is used to produce only a *de minimis* amount of the relevant product in the downstream geographic market. The Commission expects that vertical mergers that fall into this category will be relatively easy to identify. An example is when the upstream merging firm supplies one energy source, but almost all of the energy in the downstream market is produced from generating capacity which uses a different energy source. In cases similar to this, a vertical merger should pose no competitive concern.[95]

The Commission proposed that applicants desiring to make such a showing identify products sold by the upstream and downstream merging firms and identify the suppliers in the downstream market (by type of generation, *e.g.,* gas-fired, coal-fired, etc.) that could compete with the downstream merging firm in providing downstream products. When identifying the downstream suppliers, it is necessary to determine whether customers affected by the merger could turn to alternative suppliers in the event of a post-merger price increase. The Commission additionally proposed that applicants define the downstream geographic market. As we stated in the NOPR, because of the wide variety of factual scenarios presented in merger applications, we did not propose thresholds for the proportion of output in the downstream geographic market that is accounted for by the inputs sold by the upstream merging firm or other ''bright line'' tests for such *de minimis* determinations.

Comments and Commission Conclusions

No specific comments were received on this issue, although comments regarding ''Merger Applications That are Exempt from a Competitive Screen'' (Section V.H) and ''Vertical Analytical Guidelines'' (Section VI.B) apply in this case. Based on the discussion in these sections, we adopt the NOPR requirements relating to this component of the vertical competitive analysis. However, to ensure the analysis provided by applicants supports a showing that a proposed merger qualifies for abbreviated filing requirements, we will additionally require that.[96] (1) The applicant demonstrates that the merging entities do not currently operate in the same geographic markets, or if they do, that the extent of such overlapping operation is *de minimis;* and (2) no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

The Upstream Merging Firm Does Not Sell Products in the Relevant Geographic Market in Which the Downstream Merging Firm Resides

Background

A vertical merger involving an upstream firm that does not sell into the relevant downstream geographic market would not affect competition in that market. The Commission proposed that applicants desiring to make such a showing identify: (1) The products sold by the upstream and downstream merging firms; (2) all downstream suppliers who purchase inputs from the upstream merging firm; and (3) determine if those downstream suppliers compete with the merging firm to supply downstream products. For these abbreviated filing requirements, we proposed applicants

[92] Regulatory evasion could effect requirements service customers in wholesale electricity markets. However, this is less likely to be a concern if wholesale markets are competitive.

[93] NRECA at 25. In the merger as originally proposed, eleven states were directly affected, yet, says NRECA, the merging parties asserted that only four states (all within CWS's territory) had clear authority to approve or reject the merger.

[94] Policy Statement at 30,128.

[95] *See*, Duke/PanEnergy, 79 FERC ¶ 61,236 at 62,039.

[96] *See* supra note 29.

must justify their analyses and provide all supporting data and documentation.

We solicited comments on the reasonableness and efficacy of the proposed abbreviated filing requirements provisions; approaches to approximating the downstream geographic market; and appropriate *de minimis* thresholds for the amount of downstream output produced by inputs sold by the upstream merging firm.

Comments and Commission Conclusion

As in the previous section, no specific comments were received for this issue, although comments summarized regarding ''Merger Applications That are Exempt from a Competitive Screen'' (Section V.H) and ''Vertical Analytical Guidelines'' (Section VI.B) apply in this case. Based on the discussion in these sections, we adopt the NOPR requirements, as relating to this component of the vertical competitive analysis. However, to ensure that the analysis provided by applicants supports a showing that a proposed merger qualifies for abbreviated filing requirements, we will additionally require that: [97] (1) Applicants demonstrate that the merging entities do not currently operate in the same geographic markets, or if they do, that the extent of such overlapping operation is *de minimis;* and (2) no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

D. Components of the Analysis as Proposed in the NOPR

Relevant Products and Relevant Geographic Market

Background

In this section we first discuss the methods of identifying the relevant products and defining the relevant geographic market as set forth in the NOPR.

Downstream Market

We proposed that applicants be required to identify and define the relevant products sold in the downstream electricity market affected by current and prospective business activity of the upstream merging firm. We sought comments on how, if at all, our approach for defining relevant products in the downstream market should differ from that used for horizontal mergers. We also asked for comments on any alternative approaches. No specific comments were offered, although all the horizontal ''Relevant Products'' comments apply to the downstream markets in a vertical case.

Upstream Market

We proposed that applicants must identify the products produced by the upstream merging firm and used by the downstream merging firm and/or its competitors in the production of relevant downstream electricity products. Upstream products can be grouped together whenever they are good substitutes for each other from the buyer's perspective. Products may also be differentiated with respect to time, since supply and demand conditions vary considerably over the year.

We also proposed the relevant products identified by the applicant must be explained and well-documented. The Commission sought comments on the proposed approach, any alternative approaches to defining relevant input products, and how such approaches will vary for different types of inputs.

Geographic Markets—Downstream Market

Defining the downstream geographic market consists of identifying the customers potentially affected by the merger and the suppliers that can compete with the merging firm to supply a relevant electricity product. In the regulations for the horizontal screen analysis, relevant geographic electricity markets are defined using the delivered price test and if applicants so choose, additional methods that are adequately supported. Under the delivered price test, a supplier is considered to be in the market if it has generating capacity from which energy can be made available and delivered to the market at a price, including transmission and ancillary services, no more than five percent above the market price.

In the NOPR, the Commission proposed that the relevant downstream geographic market in a vertical merger would be defined similarly to those in the proposed regulations for the horizontal analytic framework. However, we sought comments on the appropriateness of the delivered price test analysis for analyzing downstream markets in vertical mergers. We also solicited comments on any alternative approaches to defining downstream geographic markets in a vertical merger.

Geographic Markets—Upstream Market

In the NOPR, the Commission did not propose precise filing requirements for defining upstream geographic markets. One reason was that the Commission had not yet acted upon an application for a merger with vertical aspects that required a rigorous definition of the upstream geographic market. Another reason was that the types of analysis and data needed to define geographic upstream markets may vary from input to input. The Commission expected to better understand the data and analysis needed to define geographic input markets—if such analysis proved necessary—as we evaluated proposed vertical mergers. Until such time, the Commission proposed that applicants approximate the upstream geographic market for each relevant upstream product and submit data and documentation necessary to support their analyses. Such approximate definitions of the upstream geographic market could be based on historical trade data. We proposed that applicants define the smallest reasonable geographic markets.

We proposed that applicants fully explain, justify and document their analysis, including all supporting data and documentation. We sought comment on appropriate approaches to defining upstream geographic markets in vertical mergers.

Comments and Commission Conclusion

No specific comments were submitted with respect to relevant products and geographic markets in a vertical analysis. However, comments on horizontal ''Relevant Geographic Markets'' apply to downstream markets when considering a vertical analysis. We also note that the Commission has provided guidance on defining upstream relevant geographic markets involving mergers of companies with interests in generation and delivered gas in *Dominion.* Accordingly, as discussed in this section, we adopt the NOPR requirements. The filing requirements for this aspect of the analytic framework are set forth in §§ 33.4(c)(1) and 33.4(c)(2) of the revised regulations.

Evaluating Competitive Conditions in Geographic Markets

Upstream Market

Background

The NOPR proposed that Applicants assess competitive conditions in the upstream market by calculating market shares for each supplier and market concentration using the HHI statistic. Upstream geographic markets that are ''highly concentrated'' under the Guidelines standard (*i.e.,* an HHI of 1800 or above) are considered to be conducive to the exercise of market power and therefore warrant additional analysis. We sought comments on this approach to assessing market shares and

[97] *See* supra note 29.

concentration in the upstream market, along with any alternative approaches.

Comments

EEI suggests the Commission find that an upstream merging firm has no ability to raise input prices for rival generators in cases where either the HHI statistic is less than 1800 or the firm's upstream market share is less than twenty percent. In either instance, it suggests the Commission require no further analysis.

Commission Conclusion

We adopt the proposals set forth in the NOPR. We note, however, that a certain degree of discretion is necessary in evaluating merger proposals. We are not persuaded by EEI's argument that we should conclude that the merged firm can not raise rivals' costs if the upstream merging firm's market share is less than twenty percent. The Commission expects analyses to provide adequate information with which to judge the merger's competitive effect. The specific filing requirements for assessing the competitive conditions in the upstream market are set forth in § 33.4(c)(3)(ii) of the requirements.

Downstream Market

Background

We proposed that once the downstream geographic market has been defined, applicants assess competitive conditions by calculating market shares for the suppliers identified in the delivered price test and using them to compute the HHI market concentration statistic.

The NOPR also proposed the Commission require that for a vertical merger, downstream market share statistics reflect the ability of buyers in the downstream market to switch—in response to a price increase—from generation served by the upstream merging firm. Specifically, applicants would identify the upstream suppliers who sell or deliver inputs to each generating unit or plant in the downstream geographic market. All generation capacity served by the same input supplier would be considered together and therefore be assigned a market share, *i.e.,* treated as if it were owned or controlled by a single firm.[98]

While the Commission has not explicitly required HHI statistics for relevant geographic markets in prior vertical merger cases, the HHI statistic is, along with market share, a generally accepted indicator of competitive conditions in a relevant market.[99] As a general matter, markets that are ''highly concentrated'' under the Guidelines standard (*i.e.,* an HHI of 1800 or above) are considered to be conducive to the exercise of market power and, therefore, warrant additional analysis.[100] We sought comments on this approach to assessing market shares and market concentration in the downstream market, along with any alternative approaches.

Comments

EEI comments that in some cases upstream markets may not display the characteristics they suggest and it would be necessary also to evaluate downstream geographic markets. They suggest that the capacity of generators be attributed to the suppliers of the upstream input only for upstream firms that have both the *incentive* and *ability* to bring about a price increase for the input. For example, non-vertically integrated firms cannot gain from higher generation prices as a consequence of raising the price of inputs. This may overstate market concentration and point to a market power problem that does not exist.

Commission Conclusion

We adopt the proposals set forth in the NOPR. Concerning EEI's comment regarding generation attribution, we note that the method proposed is a reasonable way—in the case of mergers involving the combination of generation and delivered gas supply—to portray the existing arrangements between upstream delivered gas suppliers and generators in the downstream relevant market. We agree with EEI that it is important ultimately to determine whether the merged firm will have the ability and incentive to adversely affect prices or output. However, this analysis is logically performed after a structural assessment of the downstream and upstream markets is complete. In fact, the Commission routinely evaluates the structural characteristics of upstream and downstream relevant markets and then goes on to consider additional factors pertaining to whether the merged firm would have the ability and incentive to adversely affect prices and output.

We also note that a number of important considerations in evaluating downstream markets have arisen in recent merger cases. For example, in *AEP/CSW*[101] we found that applicants had not properly modeled the possible vertical foreclosure scenarios in which AEP or CSW could use its transmission system to frustrate competition. We agreed with intervenors that, by looking only at suppliers that were ''first-tier'' to one applicant and buyers that were ''first-tier'' to the other applicant, the applicants excluded many foreclosure scenarios. Moreover, by looking only at the least-cost contract path, applicants ignored foreclosure scenarios. Their analysis focused solely on whether the merger *created* the incentive to increase prices, thus ignoring cases where the merger *enhanced* that incentive and cases where the merger created or enhanced the *ability* to raise prices. Applicants concluded that because the change in market concentration under a particular foreclosure scenario did not exceed the horizontal merger standard, the merger did not create or enhance vertical market power. However, as we explained in *Dominion,* the market concentration level, as opposed to the change in market concentration, is the relevant measure, since highly concentrated upstream and downstream markets are necessary, but not sufficient, conditions for a vertical foreclosure strategy to be effective.

The specific filing requirements for assessing the competitive conditions in the downstream market are set forth in § 33.4(c)(3)(i) of the regulations.

E. Mitigation Measures and Analysis of Other Factors as Proposed in the NOPR—Introduction

Where applicants' analysis produces concentration results that raise concerns, the Commission proposed that applicants evaluate additional factors to help determine whether a proposed merger would be likely to harm competition in electricity markets. Applicants would evaluate these factors only if competitive conditions in the upstream and downstream markets indicate that the merger could raise rivals' costs or facilitate coordination, as described in the following sections. In lieu of addressing these additional factors, applicants could propose mitigation measures. Proposals must be specific, and applicants would have to demonstrate that proposed measures

[98] *See, Enova,* 79 FERC ¶ 61,372 at 62,562. If multiple upstream suppliers serve a single generating plant or unit, applicants' analysis must take this into account.

[99] The DOJ 1984 Merger Guidelines address vertical mergers and discuss both market share and HHI statistics. *See* DOJ 1984 Merger Guidelines at 46.

[100] The DOJ 1984 Merger Guidelines use a ''highly concentrated'' market as a threshold for further investigating the competitive effect of a vertical merger. *See* DOJ 1984 Merger Guidelines at 46. Because concentration thresholds are indicators that additional investigation is warranted, the Commission proposed to look further at mergers with an HHI near 1800 or above.

[101] *See,* American Electric Power Company, 90 FERC ¶ 61,242.

would adequately mitigate any adverse effects of the merger.

If applicants choose not to propose mitigation, the factors that applicants would have to evaluate in this stage of the analytic framework are those set out in sections 2 through 5 of the Guidelines: potential adverse competitive effects, ease of entry by competitors, merger-related efficiencies, and whether one of the merging firm's assets would exit the market but for the merger. The first three of these factors can counteract any potential competitive harm indicated by market share and concentration statistics. Regarding entry, the Commission sought comments on the circumstances under which entry into either the upstream or downstream markets would be sufficient to mitigate the potential competitive harm of a proposed merger and the circumstances under which entry into both markets would be necessary.[102] The first of these factors looks more specifically at the circumstances under which adverse competitive effects would materialize. Below, we discuss the requirements for evaluating such circumstances for mergers posing foreclosure/raising rivals' costs and anticompetitive coordination concerns.

Foreclosure/Raising Rivals' Costs

Background

If in the competitive analyses both the upstream and downstream markets are found to be conducive to the exercise of market power, we proposed that applicants demonstrate that raising rivals' costs would be difficult if the applicants believe the newly merged firm's ability to pursue anticompetitive policies has been overstated by assumptions in the analysis. In doing so, we proposed that applicants be required to provide adequate information, supported by data and documentation, regarding how the merged firm could raise its rivals' costs. The information must include (as necessary), but is not limited to: (1) Types of products or services sold by the upstream firm to each downstream competitor; (2) terms of contracts under which products or services are sold and the duration of such contracts; (3) a description of the prices, availability, quality and input delivery points of inputs sold to downstream competitors; and (4) information on generation unit scheduling, anticipated technological improvements, and marketing that is provided by customers to the upstream firm, particularly any market-sensitive information that may be subject to confidentiality provisions.[103]

We sought comments on how such data can be made available to interveners under protective order procedures. The Commission also sought comments on other considerations that may affect a finding that a proposed vertical merger would be likely to impair competition in electricity markets and how such considerations should be analyzed.

Comments

NRECA states that the Commission should avoid routine use of protective orders because they interfere with case processing and undermine the public's right to know and because of the need for intervenors to assist the Commission in analyzing the effects of a merger on competition.

On the opposite side, EEI asserts that as the Commission increasingly handles commercially sensitive information, we must guard against unnecessary disclosure. It notes that both the FTC Staff and DOJ, but not the Commission, have statutory protections preventing disclosure of commercially sensitive information. EEI urges the Commission to consider that the release of commercially sensitive information can harm vital competition in the market or create strategic advantages for some of the participants in the market and can distort the efficient distribution of resources. EEI further recommends the Commission restrict the filing requirements to only the information that is necessary to support the screen analysis.

The FTC Staff suggests the Commission obtain authority to subpoena (and hold under strong confidentiality provisions) the decision, planning and marketing documents of the merging parties, as well as related documents from competitors, suppliers, customers, and trade associations. It also comments that the Commission may wish to pursue authority to depose pertinent personnel from the merging parties and from third parties under similar confidentiality conditions.

Also, the FTC Staff states that instead of asking merging parties to supply estimates about the operations of other firms, including current or future competitors, the Commission should subpoena data from the third parties themselves, since in its experience, subjective assessments by one party about the operations of other parties can contain considerable error and bias, especially when the merging parties have incentives to portray markets as highly competitive. The FTC Staff explains that going straight to third parties enables its staff to cross-check important facts, such as market share data, with multiple information sources. Such procedures, it says, should lead to reasonably timely and accurate data to better support the Commission's decisions.

In addition, all comments provided under the ''Foreclosure/Raising Rivals' Cost'' subsection under ''Vertical Analytic Framework'' apply here.

Commission Conclusion

The Commission is mindful of the delicate balance between the public's (including intervenors') right to know and the protection not only of certain commercially-sensitive information, but of the competitive marketplace itself. Thus, the Commission will not forego the use of protective orders, but will instead make careful use of them if needed to gather and analyze market-sensitive information. The Commission will not place restrictions on itself as to the types of data it will collect, but will take into account the desire of applicants to protect their competitive positions.

We will require that applicants evaluate whether customers of the upstream input supplier can switch to alternative inputs to avoid a price increase by the upstream merging firm. If switching to alternative inputs is possible, the merger may not create or enhance the ability of the merging firm to affect output and prices in the upstream market.

We will require that applicants provide data showing how regulatory requirements governing the conduct of upstream input suppliers (such as open access provisions applicable to gas pipelines under Order No. 636)[104] could counteract any competitive harm posed by a merger.

Finally, a merged company has no incentive to adversely affect prices through a raising rivals' costs strategy unless such behavior is profitable or can be used to maintain sales, market share

[102] *See DOJ* 1984 Merger Guidelines §§ 4.211 and 4.212.

[103] *See,* Vastar Resources, Inc., *et al.,* 81 FERC ¶ 61,135 at 61,633.

[104] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas After Partial Wellhead Decontrol, Order No. 636, FERC Stats. and Regs. ¶ 30,939 (April 8, 1992), *order on reh'g,* Order No. 636–A, FERC Stats, & Regs. ¶ 30,950 (August 2, 1992), *order on reh'g,* Order No. 636–B, 61 FERC ¶ 61,272 (November 27, 1992), *reh'g denied,* Order No. 636–C, 62 FERC ¶ 61,007 (January 8, 1993), *order aff'd in part and remanded in part,* United Distribution Companies, v. FERC, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand,* Order No. 636–C, 78 FERC ¶ 61,816 (1997).

or profits. Therefore, we will require that applicants provide data and an assessment of the profitability of a raising rivals' costs strategy if this data could be helpful to determine whether such incentive exists.

The filing requirements for this aspect of the analytic framework are set forth in § 33.2(g)(4) of the revised regulations.

Facilitating Anticompetitive Coordination

Background

As discussed earlier, a vertical merger could harm competition in the downstream market by facilitating anticompetitive coordination in either the upstream or the downstream markets. Comments were solicited on how a vertical merger could facilitate anticompetitive coordination; the conditions under which coordination would impair competition in electricity markets; and the significance of coordination problems.

Comments

The FTC Staff remarks that in order to assess coordinated interaction, more than market share statistics need to be gathered. The Horizontal Merger Guidelines focus on the conditions likely for collusion to take place. Successful coordinated interaction includes reaching agreement on profitable coordination among companies, detecting deviations from that agreement, and punishing any such deviation. A better analysis of the increased likelihood of coordinated interaction, according to the FTC Staff, results when market share statistics are supplemented with other sources of information. For example, market share statistics would not reveal the fact that a merger might adversely affect competition by eliminating a maverick firm.

To better address coordinated interaction concerns, the FTC Staff recommends that the Commission go beyond market share analysis to potentially useful third party information. The FTC Staff suggests that since firms have little incentive to accurately estimate their own abilities to engage in anticompetitive conduct, self-reported estimates should be validated independently. Otherwise, the Commission may be relying on inaccurate data.

Commission Conclusion

We agree with the FTC Staff that when anticompetitive coordination is a concern, our analysis may have to go beyond market share and concentration analysis to third-party information. In such cases, the Commission could implement procedures under which such information could be collected. We also note that in approving certain mergers we can take steps to avoid structures and relationships that encourage anticompetitive coordination. At the very least, we will monitor the behavior of merged companies and adjust the scope of our investigations into future mergers accordingly.

Therefore, we believe that the instructions outlined in the NOPR concerning anticompetitive coordination will generally give the Commission the information it needs to analyze the impact of a proposed merger on the market, and we adopt them.

F. Remedy—Concerning Vertical Mergers

Background

The NOPR proposed that if a vertical merger raises competitive concerns after accounting for the additional factors described in the previous section, the merger may be made acceptable if certain remedial actions are taken. The NOPR cited *Enova,* where the Commission specified certain remedies that would address the competitive concerns presented by that merger. The remedies included a code of conduct, restrictions on affiliate transactions and an electronic gas reservation and information system.[105]

Comments and Commission Conclusion

No comments were received on this issue. We therefore adopt the proposals set forth in the NOPR.

VII. Effect on Rates—Revised Requirements for Ratepayer Protections

Background

In the Policy Statement, we determined that ratepayer protection mechanisms (*e.g.,* open seasons to allow early termination of existing service contracts or rate freezes) may be necessary to protect the wholesale customers of merger applicants. If the proposed merger raises substantial issues of fact with regard to its impact on rates, we stated we will consider further investigation of the matter or set it for hearing.[106]

Thus, in the NOPR we proposed that all merger applicants demonstrate how wholesale ratepayers will be protected and that applicants will have the burden of proving that their proposed ratepayer protections are adequate. Specifically, we proposed that applicants must clearly identify what customer groups are covered (*e.g.,* requirements customers, transmission customers, formula rate customers, etc.), what types of costs are covered, and the time period for which the protection will apply.

Comments and Commission Conclusion

No specific comments were received on this issue. We adopt the proposals set forth in the NOPR. We emphasize, however, that if applicants do not offer any ratepayer protection mechanism, they must explain how the proposed merger will provide adequate ratepayer protection. Accordingly, we are adopting § 33.2(g) as proposed in the NOPR.

VIII. Effect on Regulation—Revised Requirements Concerning the Impact on State and Commission Regulatory Jurisdiction

Background

In the Policy Statement we stated that, in merger filings involving public utility subsidiaries of registered holding companies, applicants must either commit to abide by the Commission's policies with respect to intra-system transactions within the holding company structure or be prepared to go to hearing on the issue of the effect of the proposed registered holding company structure on effective regulation by the Commission.[107] Thus, in the NOPR we proposed that, for all merger applications involving public utility subsidiaries of registered holding companies, applicants include a statement indicating such a commitment.

Comments

Several commenters raise issues concerning gaps that may result if the Public Utility Holding Company Act of 1935 (PUHCA) is repealed or amended. Specifically, AFPA recommends the Commission seek to retain full antitrust jurisdiction, and antitrust standards of PUHCA, if current proposed legislation is successful. APPA states the Commission's antitrust standards should be revised rather than eliminated to prevent horizontal monopolies and other abuses.

[105] *Enova,* 79 FERC ¶ 61,372 at 62,565 (1997).

[106] Policy Statement at 30,111, 30,121–24, and n.5. *See also,* Morgan Stanley, 79 FERC at 61,504–05; Duke/PanEnergy, 79 FERC at 62,039–41; *Enova,* 79 FERC at 62,566; Destec, 79 FERC at 62,574–75; LILCO, 80 FERC at 61,079–80; FirstEnergy, 80 FERC at 61,098; NorAm, 80 FERC at 61,382–3.

[107] Policy Statement at 30,112 and 30,124–25. *See also, Duke/PanEnergy,* 79 FERC at 61,041–42; *Morgan Stanley,* 79 FERC at 61,505; *Enova,* 79 FERC at 62,566–67; *Destec,* 79 FERC at 62,575; *LILCO,* 80 FERC at 61,080; *FirstEnergy,* 80 FERC at 61,098–99; *Noram,* 80 FERC at 61,383; and *Atlantic City/Delmarva,* 80 FERC at 61,412–13 and n.60.

Commission Conclusion

We conclude that, as proposed in the NOPR, for all merger applications involving public utility subsidiaries of registered holding companies, applicants must include a commitment to abide by the Commission's policies with respect to intra-system transactions within the holding company structure or be prepared to go to hearing on the issue of the effect of the proposed registered holding company structure on effective regulation by the Commission.

Since a regulatory gap can also occur on the state level, a merger applicant must state whether the affected state commissions have authority to act on the proposed merger. Where the affected state commissions have such authority, the Commission will not set for further investigation or hearing the matter of whether the transaction will impair effective regulation by the state commissions. However, if affected state commissions lack authority over the merger and raise concerns about the effect on regulation, we will consider, on a case-by-case basis, whether to set this issue for hearing.[108] This information must be included in the applicants' explanation of the effect of the transaction on regulation required in § 33.2(g)(1) of the revised regulations.

IX. Emerging Issues

Introduction

In the NOPR, the Commission solicited comments on a number of emerging issues in the electric industry that could have significant effects on its proposed filing requirements. These issues include the use of computer-based simulation models; if and how to account for restructuring, retail competition, and other types of competitive issues in merger analysis; and suggestions of a moratorium on mergers in the electric industry. We received numerous comments in response to these questions, as discussed below.

A. Computer-Based Simulation Models

Background

The use of computer models—specifically, computer programs used to simulate the electric power market—has been raised in comments on the Policy Statement and also in specific cases. In comments responding to the Policy Statement, DOJ recommended using computer simulations to delineate markets and also noted that these simulations could be helpful in gauging the market power of the merged firm. The Commission stated in the NOPR that it believed that use of a properly structured computer model could account for important physical and economic effects in an analysis of mergers and may be a valuable tool to use in a horizontal screen analysis. For example, a computer model might prove particularly useful in identifying the suppliers in the geographic market that are capable of competing with the merged company. It could provide a framework to help ensure consistency in the treatment of the data used in identifying suppliers in a geographic market.

Therefore, the Commission also issued a notice of request for written comments and intent to convene a technical conference concurrently with the NOPR.[109] As more fully explained in the notice, the purpose of this inquiry was to gain further input into whether and how computer models can be useful to the competitive analysis set forth in Appendix A of the Policy Statement.

Comments

Several commenters agree that a computer model may be useful in the Commission's analysis of mergers and that the Commission should develop in-house expertise in developing models. However, commenters also recommend the Commission not rush to adopt a computer model, acknowledging that there is no model currently available that should be adopted as a standard. Some commenters argue that flexibility is important, and that a combination of models may be needed but that the use of too many models may become burdensome on smaller utilities and public interest groups. However, commenters also note the various benefits of using computer models in merger analysis. For example, the FTC Staff explains that power-flow models can be useful in analyzing issues arising in both horizontal and vertical mergers; however, it also notes that current models address only the technical aspects of power flows and not the economic aspects of trading in a deregulated wholesale market. The FTC Staff also advises that it expects more flexible, reliable, and accurate models to be developed and soon become commercially available. It suggests the Commission remain flexible in its approach to merger analysis, particularly as it pertains to computer modeling, so as to allow competition among vendors and development of the best models. On the other hand, Sempra cautions against adopting computer models for merger analysis because divestiture of generation assets to unregulated entities and the construction of unregulated plants reduces the availability of public data needed to run models and because use of a model also may cause more disputes and thus more hearings.

WEPCO notes that the main advantage of models of the type proposed by the Commission is that they simulate the interaction among all loads and resources in arbitraging prices in various destination markets. Since such a model calculates prices for each load area, WEPCO claims there is no need to define geographic markets, since any area in which the merger has a significant price effect is a relevant market. WEPCO points out that such modeling can be used to determine whether mergers eliminate competitors, to explore geographic definitions, and to corroborate the results of a structural analysis.

EEI believes that future uses of computer simulation models could provide more complex behavioral analysis beyond the structural approach underlying the hypothetical monopolist test. Such an approach, EEI comments, will enhance the Commission's ability to remedy potential problems posed by proposed mergers, especially considering the need to avoid wasting resources with mitigation measures that impose unnecessary costs.

Commission Conclusions

In large part, we agree with the comments regarding the use of computer-based simulation models. We believe that such modeling can be very useful as a complement to the analysis required under the Policy Statement. We note the approach to evaluating mergers under the Policy Statement is structural. In other words, relevant markets are first defined and the effect of a merger on the structure of those markets is examined. Simulation models, however, are non-structural in nature. They model market conditions and directly estimate the effects on the market of strategic pricing and output decisions by the merging firms. Market structures are changing rapidly and market design issues have arisen in many areas of the country. Under these circumstances, simulation models may produce more accurate results more efficiently than structural analyses.

We note, however, that modeling may improve the analysis but there are many issues that must be addressed before the Commission is able to determine the appropriateness of any particular model (*i.e.,* completeness of the model and how strategic behavior is modeled). Therefore, we continue to believe a technical conference is needed to

[108] Policy Statement at p. 30,125.

[109] NOPR, p. 33,383.

discuss this matter. We will convene such a conference at some future date. In the meantime, we continue to be open to suggestions of other alternative forms of analysis.

B. Retail Competition, Restructuring, and Other Newly Emerging Competitive Issues Raised by Section 203 Transactions

Background

Over the past several years, the electric industry in the U.S. has changed dramatically, as indicated by significant levels of merger and acquisition activity, divestiture, the development of highly organized markets, and movement toward the formation of various types of RTOs. This has been in response to competitive pressures in the marketplace and regulatory initiatives at the state and federal levels. For example, the 1996 Policy Statement primarily addresses horizontal mergers; however, shortly after it was issued, a number of vertical electric-gas mergers were filed with the Commission. For this reason, we requested comments in the NOPR on whether we should expect new types of corporate transactions involving public utilities to emerge, what form they might take, and how we should analyze the competitive effects if such combinations are in fact presented.[110] We sought comments on new kinds of mergers that may lead to the blurring of traditional utility services and other business lines.

The NOPR also requested comments on how the structural changes occurring in the electric industry should be considered in our analysis of the effect that public utility mergers may have on competition. The NOPR inquired whether participation by merger applicants in an ISO or similar regional body requires modification of the Commission's merger analysis. Finally, we sought comments on whether it is feasible to address competition only at the wholesale level and to ignore changes in the market that arise from state retail choice programs and that transform retail franchise service territories into multi-state supplier markets.

Comments

Many commenters call upon the Commission to account for restructuring and the development of RTOs in its assessment of proposed mergers, the effect of mergers on retail competition, and other types of competitive issued raised by mergers.

In response to the Commission's questions on restructuring in the electric industry, the Missouri Commission suggests the Commission perform a comprehensive generic study of market power in the restructured electric power industry along the lines recommended by Assistant Attorney General Klein.[111] Antitrust Institute and NASUCA suggest the Commission's analysis consider the effect of a merger not only on currently regulated but also on future, competitive markets.

The Missouri Commission and NASUCA further suggest that, where a future market is uncertain due to the absence of an ISO, the Commission should consider identifying the uncertainties and conditioning the approval of such mergers to preserve the Commission's ability to gather additional facts or make changes in the merged company's ownership of assets at a later time. The Missouri and New York Commissions assert that this approach could be particularly helpful with regard to concerns about the competitive impacts of other mergers pending in the same markets.[112] However Southern argues that since many proposed mergers are ultimately abandoned, each prospective merger candidate should be treated independently of other mergers unless they have been consummated.

Antitrust Institute recommends that mergers involving transmission be conditioned upon the independent ownership and management of the merged company's transmission. It suggests a rebuttable presumption favoring the merging parties' participation in an ISO, as long as participation is accomplished prior to consummation of the merger and the Commission conditions its approval of the merger to assure that the intended competitive conditions are put in place. The Midwest ISO Participants contend that the rebuttable presumption should be that merger applicants lack market power in generation when they are members of a Commission approved ISO and their total generation market share is no more than 20 to 25 percent of the total generation in the ISO.

In regard to retail competition, the Missouri Commission and NASUCA claim the NOPR failed to account for the blurring of lines between wholesale and retail products; NASUCA therefore urges the Commission to update its traditional emphasis on wholesale bulk power products to include a focus on actual products and services in retail markets. NARUC notes that state commissions may not be able to adequately participate in the Commission's merger proceedings because of pending state proceedings on the merger. It suggests that, in accord with the Commission's Policy Statement, state regulators should be able to request that the Commission analyze the effects of a merger in concert with the state in order to capture the unique circumstances of retail markets. This, it states, should not assume that the request constitutes a forfeiture of a state's jurisdictional authority. The Ohio Commission similarly recommends the Commission consider any local concerns which a state brings before it, regardless of the state's independent authority to examine mergers.

NRECA also submits that, in the absence of state review of a public utility merger's effect on retail markets, a regulatory gap would be created unless the Commission acts to consider such effects. APPA/Transmission Access Policy Study Group claims that under the public interest test of section 203 of the FPA, the Commission must consider the effect of a public utility merger on retail markets because retail choice programs are effectively ending the substantive distinction between wholesale and retail power markets.

On the other hand, WEPCO counters that retail choice does not require the Commission to expand its public utility merger investigations. This is because there is no nexus between retailing activities and the Commission's bulk power concerns and because retail choice does not affect states' authority to oversee the activities of electricity retailers and any retail-related merger effects. EEI points out that the FPA leaves retail matters to the states. EEI argues the Commission reached the proper balance in its Policy Statement, where we committed to focus on retail competition analysis only if a state lacks adequate authority and asks us to consider the matter.

Finally, in regard to other types of competitive issues raised by mergers, Antitrust Institute recommends we require information on the effect of proposed mergers on potential competition and ''workably'' competitive markets and also require support for claims that competition in such markets will not be reduced. Sustainable Policy believes the Commission must also analyze the effects of environmental regulations on competition in relevant markets. Since

[110] NOPR, pp. 33,383–84.

[111] Missouri Commission cites ''Making the Transition from Regulation to Competition: Thinking About Merger Policy during the Process of Electric Power Restructuring,'' Address by Joel I. Klein, United States Department of Justice, Assistant Attorney General, Antitrust Division, FERC Distinguished Speaker Series (January 21, 1998).

[112] NOPR, p. 33,368.

most power plants are exempt from New Source Performance Standards and New Source Review, such requirements may frustrate entry by competitors that could otherwise mitigate the merged entity's market power. In its view, applicants should also be required to analyze the effects of the merged firm holding or selling pollution entitlements.

Commission Conclusions

Traditionally, the issue of potential competition has not arisen in mergers involving electric utilities, largely because utilities have been limited to business operations within franchised service territories. However, with federal and state initiatives (for example, open access, market-based rates for generation-based products, and regional transmission organizations), and product diversification by many increasingly integrated energy companies, companies do enter other markets.

As part of its merger analysis, the Commission intends to consider current and reasonably foreseeable regional developments and to seek additional relevant data and information. For example, as stated earlier, applicants are required to file information regarding markets in which they currently sell. In cases where the effect of a proposed merger on potential competition is a concern, we would rely, in reaching a determination, on the standards of review adhered to by the Department of Justice and Federal Trade Commission. We acknowledge that additional information beyond that required here may also be necessary to evaluate these effects and reiterate that the Commission may require supplementary information as necessary.

In addition, in regard to our consideration of a merger's impact on retail markets, consistent with our Policy Statement,[113] we stand ready to evaluate a proposed merger's impact on retail competition if a state lacks adequate authority to consider such matters and requests us to do so. The recent developments in some markets have demonstrated the relationship between conditions in retail markets and wholesale market prices. In our analysis of mergers we will take cognizance of market conditions.

We have considered the requests of NASUCA and the Missouri Commission that the Commission adopt a new policy to extend its analysis in all merger cases to include retail markets. We decline to extend the general scope of our merger review in this manner. Many of the concerns raised by these commenters deal with the situation where the state commission does not have the authority to evaluate or remedy the merger's effect on retail markets, *e.g.,* when the state laws do not cover the particular merger under consideration or when a merger involving entities in one state impacts retail markets in another state. As we made clear in the Policy Statement and the NOPR, the Commission stands ready to evaluate the effect of a merger on retail competition if a state lacks authority in these kinds of circumstances and asks us to do so. NASUCA and the Missouri Commission argue that changes in the industry are blurring the lines between wholesale and retail markets, making broader exercise of our section 203 authority important. As we acknowledged in the NOPR, changes resulting from industry restructuring may make retail market development critical to a particular merger. For example, retail access programs that may affect the assumptions that underlie the competitive analysis. Moreover, our authority to ensure nondiscriminatory open access to unbundled retail transmission may be important to the competitive effects of any merger application. We understand that as electric restructuring continues to evolve, there may be further developments related to retail services that raise issues that are directly relevant to our review of future mergers under Section 203. We take this opportunity to clarify that we will retail market issues when circumstances warrant. However, it is our continuing position that our merger review should not, as a matter of course review a merger's impact on retail markets in that state when a state is clearly able to do so.

C. Moratorium on Mergers

Background

Some commenters recommend the Commission impose a moratorium on merger approvals. NASUCA and APPA/Transmission Access Policy Study Group recommend the Commission either impose a moratorium on public utility mergers that may raise competitive issues or, at a minimum, require that the benefits of such mergers be convincingly established. NASUCA notes that incumbent dominant firms may be able to pick off rivals in their infancy before they become serious competitors. Similarly, the Missouri Commission argues for a brief moratorium on mergers because data on competition in the electric industry is scarce and more time is needed to develop empirical evidence and a market-based history for making competitive evaluations.

On the other hand, EEI opposes a moratorium on public utility mergers, claiming that it would delay an efficient transition to competition. In its view, mergers represent the natural evolution of the markets and even a temporary ban would impose large costs on both consumers and stockholders that would not be in the public interest.

Commission Conclusion

We do not believe that a temporary moratorium on utility mergers is necessary. Adequate regulatory safeguards are in place that protect against potential adverse effects. Pursuant to section 203 of the FPA, the Commission has the authority to issue a merger order upon such terms and conditions as it finds necessary or appropriate and, for good cause, may issue such supplemental orders as it may find necessary or appropriate.

X. Regulatory Flexibility Act

The Commission adheres to its certification in the NOPR that this rulemaking will not have a significant economic impact upon a substantial number of small entities. As stated in the NOPR, the rule does not regulate small entities as defined in the Small Business Act.[114] A description and analysis of the rule's effect on small businesses is therefore not required by the Regulatory Flexibility Act.[115]

XI. Environmental Statement

The Commission concludes that this rule will not be a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environment Policy Act.[116] The rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, mergers, interlocking directorates, jurisdictional determinations and accounting.[117] Consequently, neither an environmental

[113] Policy Statement at p. 30,127–28.

[114] 5 U.S.C. 601(3) (citing § 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a); *cf.* 13 CFR Part 121 (containing size standards for determining whether businesses in various industries qualify as ''small'').

[115] 5 U.S.C. 601–612.

[116] 18 CFR Part 380.

[117] 18 CFR 380.4(a)(16).

assessment nor an environmental impact statement is required.

XII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and record keeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The final rule will affect one existing data collection, FERC–519.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995,[118] the proposed data requirements in the subject rulemaking have been submitted to OMB for review.

Public Reporting Burden: The total estimated burden associated with this proposed rule is 108,199 hours (based on number of filings during fiscal year 1999). We have estimated that depending on a number of different factors, it takes on average anywhere from 91 hours to 12,557 hours to comply with the requirements. The number of filings in 1999 totaled 121. The following table is broken down by categories to identify the types of filings submitted to the Commission under Section 203 of the FPA. These filings include: (a) Non-merger transactions, *i.e.* divestiture of assets; (b) simple merger applications where no competitive concerns are raised; and (c) complex merger applications where horizontal competitive concerns are raised and there is a need for an Appendix A analysis.

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC–519:				
(a) Non-merger	107	1	91	9,737
(b) Simple merger	7	1	1,509	10,563
(c) Complex merger	7	1	12,557	87,899
Totals	121	1	14,157	108,199

Information Collection Costs: The Commission sought comments to comply with these requirements. No comments were received. The requirements were first formulated in the Commission's 1996 Policy Statement, and specified in the NOPR. These initiatives set in motion the proposed requirements, so affected entities already have incurred any necessary start-up costs in order to comply. The costs indicated below address the additional analysis that will be necessary as a result of the requirements of this proposed rule. It is estimated that in order to conduct the appropriate analysis, there will be costs associated with the acquisition of software (including license costs) and hardware. It should be noted that these entities have access, for other business purposes, to the ordinary office equipment needed for compliance, and this rulemaking has no consequential effect on the operating and maintaining that equipment. The annualized costs are based on burden hours determined by hourly rates for labor.

Data collection	Annualized capital/start-up costs	Annualized on-going costs (operations and maintenance)	Total annualized costs
FERC–519:			
(a) W/o analysis	$0	$37,200	$37,200
(b) Simple merger	15,300	615,528	630,828
(c) Complex	162,000	5,123,400	5,285,400

Total Annualized costs when considering all filings:
(a) W/o analysis $37,200 × 107 filings × 8 = $3,980,400.
(b) Simple merger $630,828 × 7 filings = $ 4,415,796.
(c) Complex merger $5,285,400 × 7 filings = $36,997,800.
Totals = $45,393,996.

Title: FERC–519, Application for Sale, Lease or other Disposition, Merger or Consolidation of Facilities, or For Purchase or Acquisition of Securities of a Public Utility.

Action: Proposed Data Collection.

OMB Control No: 1902–0082.

Respondents: Public Utilities (Business or other for profit, including small businesses.)

Frequency of information: On occasion.

Necessity of the Information: The Final Rule revises the filing requirements in 18 CFR Part 33 which implements § 203 of the Federal Power Act (FPA). The proposed rule provides applicants with detailed guidance for preparing merger applications and is consistent with the policies set forth in the Policy Statement. The proposed rule is intended to lessen regulatory burdens on industry by eliminating outdated and unnecessary filing requirements, clarifying existing requirements, and streamlining the filing requirements for transactions that do not raise competitive concerns.

The implementation of these proposed filing requirements will help the Commission carry out its responsibilities under the FPA in accordance with the objectives of the Commission's Open Access Rule [119] and Order No. 2000 [120] to promote competitive, well-functioning markets

[118] 44 U.S.C. 3507(d).

[119] 61 FR 21, 540, May 10, 1996.

[120] 65 FR 809, January 6, 2000.

while at the same time protecting customers by constraining market power through regulation. In consideration of changing market structures in the electric industry, the Commission must ensure that no significant increase in market dominance will result from a merger or other corporate restructuring. The Commission must also ensure that ratepayers will be protected from any negative effects of a merger. The Commission also examines barriers to entry of new competitors in the market. The Commission will use the data received as a result of the proposed filing requirements: (1) In the review of the proposed merger of jurisdictional facilities to ascertain whether the merger is in the public interest; (2) for general industry oversight; and (3) to expedite the corporate application review process.

The Commission received 21 comments on the proposed reporting requirements but none on its reporting burden or cost estimates. The Commission's responses to the comments are being addressed elsewhere in this Final Rule.

For information on the requirements, submitting comments on the collection of information and the associated burden estimates, including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415, or mike.miller@ferc.fed.us) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087, fax: 395–7285.) In addition, comments on reducing the burden and/or improving the collection of information should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, D.C. 20503.

XIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the FERC Home Page (*http://www.ferc.fed.us*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From the FERC Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 formats for viewing, printing and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us).*

During normal business hours, documents can also be viewed and/or printed in the FERC Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

XIV. Effective Date and Congressional Notification

This rule will take effect January 29, 2001. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget, that this Final Rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Act of 1996.[121] The Rule will be submitted to both Houses of Congress and the Comptroller General.

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission revises Part 33, Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

[121] 5 U.S.C. 804(2).

PART 33—APPLICATION FOR ACQUISITION, SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

Sec.

33.1 Applicability.
33.2 Contents of application—general information requirements.
33.3 Additional information requirements for applications involving horizontal competitive impacts.
33.4 Additional information requirements for applications involving vertical competitive impacts.
33.5 Proposed accounting entries.
33.6 Form of notice.
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33.9 Protective order.
33.10 Additional information.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 33.1 Applicability.

(a) The requirements of this part will apply to any public utility seeking authority under section 203 of the Federal Power Act to:

(1) Dispose by sale, lease or otherwise of the whole of its facilities subject to Commission jurisdiction or any part thereof of a value in excess of $50,000;

(2) Merge or consolidate, directly or indirectly, facilities subject to Commission jurisdiction with those of any other person, if such facilities are of a value in excess of $50,000, including the acquisition of electric facilities used for the transmission or sale at wholesale of electric energy in interstate commerce which, except for ownership, would be subject to the Commission's jurisdiction; or

(3) Purchase, acquire or take any security of any other public utility.

(b) Value in excess of $50,000 as used in section 203 of the Federal Power Act (16 U.S.C. 824b) will be the original cost undepreciated as defined in the Commission's Uniform System of Accounts prescribed for public utilities and licensees in part 101 of this chapter.

§ 33.2 Contents of application—general information requirements.

Each applicant must include in its application, in the manner and form and in the order indicated, the following general information with respect to the applicant and each entity whose jurisdictional facilities or securities are involved:

(a) The exact name of the applicant and its principal business address.

(b) The name and address of the person authorized to receive notices and

communications regarding the application, including phone and fax numbers, and E-mail addresses.

(c) A description of the applicant, including:

(1) All business activities of the applicant, including authorizations by charter or regulatory approval (to be identified as Exhibit A to the application);

(2) A list of all energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged (to be identified as Exhibit B to the application);

(3) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction (to be identified as Exhibit C to the application);

(4) A description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests (to be identified as Exhibit D to the application);

(5) The identity of common officers or directors of parties to the proposed transaction (to be identified as Exhibit E to the application); and

(6) A description and location of wholesale power sales customers and unbundled transmission services customers served by the applicant or its parent companies, subsidiaries, affiliates and associate companies (to be identified as Exhibit F to the application).

(d) A description of jurisdictional facilities owned, operated, or controlled by the applicant or its parent companies, subsidiaries, affiliates, and associate companies (to be identified as Exhibit G to the application).

(e) A narrative description of the proposed transaction for which Commission authorization is requested, including:

(1) The identity of all parties involved in the transaction;

(2) All jurisdictional facilities and securities associated with or affected by the transaction (to be identified as Exhibit H to the application);

(3) The consideration for the transaction; and

(4) The effect of the transaction on such jurisdictional facilities and securities.

(f) All contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction (to be identified as Exhibit I to the application).

(g) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant must include a general explanation of the effect of the transaction on competition, rates and regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction. The applicant should also file any other information it believes relevant to the Commission's consideration of the transaction. The applicant must supplement its application promptly to reflect in its analysis material changes that occur after the date a filing is made with the Commission, but before final Commission action. Such changes must be described and their effect on the analysis explained (to be identified as Exhibit J to the application).

(h) If the proposed transaction involves physical property of any party, the applicant must provide a general or key map showing in different colors the properties of each party to the transaction (to be identified as Exhibit K to the application).

(i) If the applicant is required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the proposed transaction, the applicant must identify the regulatory bodies and indicate the status of other regulatory actions, and provide a copy of each order of those regulatory bodies that relates to the proposed transaction (to be identified as Exhibit L to the application). If the regulatory bodies issue orders pertaining to the proposed transaction after the date of filing with the Commission, and before the date of final Commission action, the applicant must supplement its Commission application promptly with a copy of these orders.

§ 33.3 Additional information requirements for applications involving horizontal competitive impacts.

(a)(1) The applicant must file the horizontal Competitive Analysis Screen described in paragraphs (b) through (f) of this section if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A horizontal Competitive Analysis Screen need not be filed if the applicant:

(i) Affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis;* and

(ii) No intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(b) All data, assumptions, techniques and conclusions in the horizontal Competitive Analysis Screen must be accompanied by appropriate documentation and support.

(1) If the applicant is unable to provide any specific data required in this section, it must identify and explain how the data requirement was satisfied and the suitability of the substitute data.

(2) The applicant may provide other analyses for defining relevant markets (*e.g.* the Hypothetical Monopolist Test with or without the assumption of price discrimination) in addition to the delivered price test under the horizontal Competitive Analysis Screen.

(3) The applicant may use a computer model to complete one or more steps in the horizontal Competitive Analysis Screen. The applicant must fully explain, justify and document any model used and provide descriptions of model formulation, mathematical specifications, solution algorithms, as well as the annotated model code in executable form, and specify the software needed to execute the model. The applicant must explain and document how inputs were developed, the assumptions underlying such inputs and any adjustments made to published data that are used as inputs. The applicant must also explain how it tested the predictive value of the model, for example, using historical data.

(c) The horizontal Competitive Analysis Screen must be completed using the following steps:

(1) *Define relevant products.* Identify and define all wholesale electricity products sold by the merging entities

during the two years prior to the date of the application, including, but not limited to, non-firm energy, short-term capacity (or firm energy), long-term capacity (a contractual commitment of more than one year), and ancillary services (specifically spinning reserves, non-spinning reserves, and imbalance energy, identified and defined separately). Because demand and supply conditions for a product can vary substantially over the year, periods corresponding to those distinct conditions must be identified by load level, and analyzed as separate products.

(2) *Identify destination markets.* Identify each wholesale power sales customer or set of customers (destination market) affected by the proposed transaction. Affected customers are, at a minimum, those entities directly interconnected to any of the merging entities and entities that have purchased electricity at wholesale from any of the merging entities during the two years prior to the date of the application. If the applicant does not identify an entity to whom the merging entities have sold electricity during the last two years as an affected customer, the applicant must provide a full explanation for each exclusion.

(3) *Identify potential suppliers.* The applicant must identify potential suppliers to each destination market using the delivered price test described in paragraph (c)(4) of this section. A seller may be included in a geographic market to the extent that it can economically and physically deliver generation services to the destination market.

(4) *Perform delivered price test.* For each destination market, the applicant must calculate the amount of relevant product a potential supplier could deliver to the destination market from owned or controlled capacity at a price, including applicable transmission prices, loss factors and ancillary services costs, that is no more than five (5) percent above the pre-transaction market clearing price in the destination market.

(i) *Supplier's presence.* The applicant must measure each potential supplier's presence in the destination market in terms of generating capacity, using economic capacity and available economic capacity measures. Additional adjustments to supplier presence may be presented; applicants must support any such adjustment.

(A) *Economic capacity* means the amount of generating capacity owned or controlled by a potential supplier with variable costs low enough that energy from such capacity could be economically delivered to the destination market. Prior to applying the delivered price test, the generating capacity meeting this definition must be adjusted by subtracting capacity committed under long-term firm sales contracts and adding capacity acquired under long-term firm purchase contracts (*i.e.,* contracts with a remaining commitment of more than one year). The capacity associated with any such adjustments must be attributed to the party that has authority to decide when generating resources are available for operation. Other generating capacity may also be attributed to another supplier based on operational control criteria as deemed necessary, but the applicant must explain the reasons for doing so.

(B) *Available economic capacity* means the amount of generating capacity meeting the definition of economic capacity less the amount of generating capacity needed to serve the potential supplier's native load commitments, as described in paragraph (d)(4)(i) of this section.

(C) *Available transmission capacity.* Each potential supplier's economic capacity and available economic capacity (and any other measure used to determine the amount of relevant product that could be delivered to a destination market) must be adjusted to reflect available transmission capability to deliver each relevant product. The allocation to a potential supplier of limited capability of constrained transmission paths internal to the merging entities' systems or interconnecting the systems with other control areas must recognize both the transmission capability not subject to firm reservations by others and any firm transmission rights held by the potential supplier that are not committed to long-term transactions. For each such instance where limited transmission capability must be allocated among potential suppliers, the applicant must explain the method used and show the results of such allocation.

(D) *Internal interface.* If the proposed transaction would cause an interface that interconnects the transmission systems of the merging entities to become transmission facilities for which the merging entities would have a ''native load'' priority under their open access transmission tariff (*i.e.,* where the merging entities may reserve existing transmission capacity needed for native load growth and network transmission customer load growth reasonable forecasted within the utility's current planning horizon), all of the unreserved capability of the interface must be allocated to the merging entities for purposes of the horizontal Competitive Analysis Screen, unless the applicant demonstrates one of the following:

(*1*) The merging entities would not have adequate economic capacity to fully use such unreserved transmission capability;

(*2*) The merging entities have committed a portion of the interface capability to third parties; or

(*3*) Suppliers other than the merging entities have purchased a portion of the interface capability.

(*5*) *Calculate market concentration.* The applicant must calculate the market share, both pre- and post-merger, for each potential supplier, the Herfindahl-Hirschman Index (HHI) statistic for the market, and the change in the HHI statistic. (The HHI statistic is a measure of market concentration and is a function of the number of firms in a market and their respective market shares. The HHI statistic is calculated by summing the squares of the individual market shares, expressed as percentages, of all potential suppliers to the destination market.) To make these calculations, the applicant must use the amounts of generating capacity (*i.e.,* economic capacity and available economic capacity, and any other relevant measure) determined in paragraph (c)(4)(i) of this section, for each product in each destination market.

(*6*) *Provide historical transaction data.* The applicant must provide historical trade data and historical transmission data to corroborate the results of the horizontal Competitive Analysis Screen. The data must cover the two-year period preceding the filing of the application. The applicant may adjust the results of the horizontal Competitive Analysis Screen, if supported by historical trade data or historical transmission service data. Any adjusted results must be shown separately, along with an explanation of all adjustments to the results of the horizontal Competitive Analysis Screen. The applicant must also provide an explanation of any significant differences between results obtained by the horizontal Competitive Analysis Screen and trade patterns in the last two years.

(d) In support of the delivered price test required by paragraph (c)(4) of this section, the applicant must provide the following data and information used in calculating the economic capacity and available economic capacity that a potential supplier could deliver to a destination market. The transmission data required by paragraphs (d)(7) through (d)(9) of this section must be supplied for the merging entities'

systems. The transmission data must also be supplied for other relevant systems, to the extent data are publicly available.

(1) *Generation capacity.* For each generating plant or unit owned or controlled by each potential supplier, the applicant must provide:

(i) Supplier name;

(ii) Name of the plant or unit;

(iii) Primary and secondary fuel-types;

(iv) Nameplate capacity;

(v) Summer and winter total capacity; and

(vi) Summer and winter capacity adjusted to reflect planned and forced outages and other factors, such as fuel supply and environmental restrictions.

(2) *Variable cost.* For each generating plant or unit owned or controlled by each potential supplier, the applicant must also provide variable cost components.

(i) These cost components must include at a minimum:

(A) Variable operation and maintenance, including both fuel and non-fuel operation and maintenance; and

(B) Environmental compliance.

(ii) To the extent costs described in paragraph (d)(2)(i) of this section are allocated among units at the same plant, allocation methods must be fully described.

(3) *Long-term purchase and sales data.* For each sale and purchase of capacity, the applicant must provide the following information:

(i) Purchasing entity name;

(ii) Selling entity name;

(iii) Duration of the contract;

(iv) Remaining contract term and any evergreen provisions;

(v) Provisions regarding renewal of the contract;

(vi) Priority or degree of interruptibility;

(vii) FERC rate schedule number, if applicable;

(viii) Quantity and price of capacity and/or energy purchased or sold under the contract; and

(ix) Information on provisions of contracts which confer operational control over generation resources to the purchaser.

(4) *Native load commitments.*

(i) Native load commitments are commitments to serve wholesale and retail power customers on whose behalf the potential supplier, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate its system to meet their reliable electricity needs.

(ii) The applicant must provide supplier name and hourly native load commitments for the most recent two years. In addition, the applicant must provide this information for each load level, if load-differentiated relevant products are analyzed.

(iii) If data on native load commitments are not available, the applicant must fully explain and justify any estimates of these commitments.

(5) *Transmission and ancillary service prices, and loss factors.*

(i) The applicant must use in the horizontal Competitive Analysis Screen the maximum rates stated in the transmission providers' tariffs. If necessary, those rates should be converted to a dollars-per-megawatt hour basis and the conversion method explained.

(ii) If a regional transmission pricing regime is in effect that departs from system-specific transmission rates, the horizontal Competitive Analysis Screen must reflect the regional pricing regime.

(iii) The following data must be provided for each transmission system that would be used to deliver energy from each potential supplier to a destination market:

(A) Supplier name;

(B) Name of transmission system;

(C) Firm point-to-point rate;

(D) Non-firm point-to-point rate;

(E) Scheduling, system control and dispatch rate;

(F) Reactive power/voltage control rate;

(G) Transmission loss factor; and

(H) Estimated cost of supplying energy losses.

(iv) The applicant may present additional alternative analysis using discount prices if the applicant can support it with evidence that discounting is and will be available.

(6) *Destination market price.* The applicant must provide, for each relevant product and destination market, market prices for the most recent two years. The applicant may provide suitable proxies for market prices if actual market prices are unavailable. Estimated prices or price ranges must be supported and the data and approach used to estimate the prices must be included with the application. If the applicant relies on price ranges in the analysis, such ranges must be reconciled with any actual market prices that are supplied in the application. Applicants must demonstrate that the results of the analysis do not vary significantly in response to small variations in actual and/or estimated prices.

(7) *Transmission capability.*

(i) The applicant must provide simultaneous transfer capability data, if available, for each of the transmission paths, interfaces, or other facilities used by suppliers to deliver to the destination markets on an hourly basis for the most recent two years.

(ii) Transmission capability data must include the following information:

(A) Transmission path, interface, or facility name;

(B) Total transfer capability (TTC); and

(C) Firm available transmission capability (ATC).

(iii) Any estimated transmission capability must be supported and the data and approach used to make the estimates must be included with the application.

(8) *Transmission constraints.*

(i) For each existing transmission facility that affects supplies to the destination markets and that has been constrained during the most recent two years or is expected to be constrained within the planning horizon, the applicant must provide the following information:

(A) Name of all paths, interfaces, or facilities affected by the constraint;

(B) Locations of the constraint and all paths, interfaces, or facilities affected by the constraint;

(C) Hours of the year when the transmission constraint is binding; and

(D) The system conditions under which the constraint is binding.

(ii) The applicant must include information regarding expected changes in loadings on transmission facilities due to the proposed transaction and the consequent effect on transfer capability.

(iii) To the extent possible, the applicant must provide system maps showing the location of transmission facilities where binding constraints have been known or are expected to occur.

(9) *Firm transmission rights (Physical and Financial).* For each potential supplier to a destination market that holds firm transmission rights necessary to directly or indirectly deliver energy to that market, or that holds transmission congestion contracts, the applicant must provide the following information:

(i) Supplier name;

(ii) Name of transmission path interface, or facility;

(iii) The FERC rate schedule number, if applicable, under which transmission service is provided; and

(iv) A description of the firm transmission rights held (including, at a minimum, quantity and remaining time the rights will be held, and any relevant time restrictions on transmission use, such as peak or off-peak rights).

(10) *Summary table of potential suppliers' presence.*

(i) The applicant must provide a summary table with the following

information for each potential supplier for each destination market:

(A) Potential supplier name;

(B) The potential supplier's total amount of economic capacity (not subject to transmission constraints); and

(C) The potential supplier's amount of economic capacity from which energy can be delivered to the destination market (after adjusting for transmission availability).

(ii) A similar table must be provided for available economic capacity, and for any other generating capacity measure used by the applicant.

(11) *Historical trade data.*

(i) The applicant must provide data identifying all of the merging entities' wholesale sales and purchases of electric energy for the most recent two years.

(ii) The applicant must include the following information for each transition:

(A) Type of transaction (such as non-firm, short-term firm, long-term firm, peak, off-peak, etc.);

(B) Name of purchaser;

(C) Name of seller;

(D) Date, duration and time period of the transaction;

(E) Quantity of energy purchased or sold;

(F) Energy charge per unit;

(G) Megawatt hours purchased or sold;

(H) Price; and

(I) The delivery points used to effect the sale or purchase.

(12) *Historical transmission data.* The applicant must provide information concerning any transmission service denials, interruptions and curtailments on the merging entities' systems, for the most recent two years, to the extent the information is available from OASIS data, including the following information:

(i) Name of the customer denied, interrupted or curtailed;

(ii) Type, quantity and duration of service at issue;

(iii) The date and period of time involved;

(iv) Reason given for the denial, interruption or curtailment;

(v) The transmission path; and

(vi) The reservations or other use anticipated on the affected transmission path at the time of the service denial, curtailment or interruption.

(e) *Mitigation.* Any mitigation measures proposed by the applicant (including, for example, divestiture or participation in a regional transmission organization) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the horizontal Competitive Analysis Screen as an additional post-transaction analysis. Any mitigation commitments that involve facilities (*e.g.,* in connection with divestiture of generation) must identify the facilities affected by the commitment, along with a timetable for implementing the commitments.

(f) *Additional factors.* If the applicant does not propose mitigation, the applicant must address:

(1) The potential adverse competitive effects of the transaction.

(2) The potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction;

(3) The efficiency gains that reasonably could not be achieved by other means; and

(4) Whether, but for the transaction, one or more of the merging entities would be likely to fail, causing its assets to exit the market.

§ 33.4 Additional information requirements for applications involving vertical competitive impacts.

(a)(1) The applicant must file the vertical Competitive Analysis described in paragraphs (b) through (e) of this section if, as a result of the proposed transaction, a single corporate entity has ownership or control over one or more merging entities that provides inputs to electricity products and one or more merging entities that provides electric generation products (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A vertical Competitive Analysis need not be filed if the applicant can affirmatively demonstrate that:

(i) The merging entities currently do not provide inputs to electricity products (*i.e.*, upstream relevant products) and electricity products (*i.e.*, downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same geographic market is *de minimis*; and no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(ii) The extent of the upstream relevant products currently provided by the merging entities is used to produce a *de minimis* amount of the relevant downstream products in the relevant destination markets, as defined in paragraph (c)(2) of § 33.3.

(b) All data, assumptions, techniques and conclusions in the vertical Competitive Analysis must be accompanied by appropriate documentation and support.

(c) The vertical Competitive Analysis must be completed using the following steps:

(1) *Define relevant products.*—(i) *Downstream relevant products.* The applicant must identify and define as downstream relevant products all products sold by merging entities in relevant downstream geographic markets, as outlined in paragraph (c)(1) of § 33.3.

(ii) *Upstream relevant products.* The applicant must identify and define as upstream relevant products all inputs to electricity products provided by upstream merging entities in the most recent two years.

(2) *Define geographic markets.*—(i) *Downstream geographic markets.* The applicant must identify all geographic markets in which it or any merging entities sell the downstream relevant products, as outlined in paragraphs (c)(2) and (c)(3) of § 33.3.

(ii) *Upstream geographic markets.* The applicant must identify all geographic markets in which it or any merging entities provide the upstream relevant products.

(3) *Analyze competitive conditions.*—(i) *Downstream geographic market.*

(A) The applicant must compute market share for each supplier in each relevant downstream geographic market and the HHI statistic for the downstream market. The applicant must provide a summary table with the following information for each relevant downstream geographic market:

(*1*) The economic capacity of each downstream supplier (specify the amount of such capacity served by each upstream supplier);

(*2*) The total amount of economic capacity in the downstream market served by each upstream supplier;

(*3*) The market share of economic capacity served by each upstream supplier; and

(*4*) The HHI statistic for the downstream market.

(B) A similar table must be provided for available economic capacity and for any other measure used by the applicant.

(ii) *Upstream geographic market.* The applicant must provide a summary table with the following information for each upstream relevant product in each relevant upstream geographic market:

(A) The amount of relevant product provided by each upstream supplier;

(B) The total amount of relevant product in the market;

(C) The market share of each upstream supplier; and

(D) The HHI statistic for the upstream market.

(d) *Mitigation.* Any mitigation measures proposed by the applicant

(including, for example, divestiture or participation in an Regional Transmission Organization) which are intended to mitigate the adverse effect of the proposed transaction must, to the extent possible, be factored into the vertical competitive analysis as an additional post-transaction analysis. Any mitigation measures that involve facilities must identify the facilities affected by the commitment.

(e) *Additional factors.*

(1) If the applicant does not propose mitigation measures, the applicant must address:

(i) The potential adverse competitive effects of the transaction.

(ii) The potential for entry in the market and the role that entry could play in mitigating adverse competitive effects of the transaction;

(iii) The efficiency gains that reasonably could not be achieved by other means; and

(iv) Whether, but for the proposed transaction, one or more of the parties to the transaction would be likely to fail, causing its assets to exit the market.

(2) The applicant must address each of the additional factors in the context of whether the proposed transaction is likely to present concerns about raising rivals' costs or anticompetitive coordination.

§ 33.5 Proposed accounting entries.

If the applicant is required to maintain its books of account in accordance with the Commission's Uniform System of Accounts in part 101 of this chapter, the applicant must present proposed accounting entries showing the effect of the transaction with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis), the effect on the income statement, and the effects on other relevant financial statements. The applicant must also explain how the amount of each entry was determined.

§ 33.6 Form of notice.

The applicant must file a form of notice of the application suitable for issuance in the **Federal Register**, as well as a copy of the same notice in electronic format in WordPerfect 6.1 (or other electronic format the Commission may designate) on a 3½″ diskette marked with the name of the applicant and the words ''Notice of Application.'' The Notice of Filing must appear in the following form:

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

[Full Name of Applicant(s)]

Docket No. XXXX–XXX–XXX

NOTICE OF FILING

Take notice that on [Date of filing], [Applicant(s)] filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby [describe the transaction for which authorization is sought, clearly identifying the jurisdictional facilities being disposed of, the entity(s) disposing of the facilities, the entity(s) acquiring/leasing the facilities and (briefly) how the disposition will be accomplished (*e.g.,* by stock transfer or a cash sale)]. [If the disposition of jurisdictional facilities is directly related to the disposition of generation assets, identify those generation assets and their total nameplate generation capacity in Megawatts. If authorization is needed for both the sale and the purchase of the jurisdictional facilities, this should be clearly stated in this paragraph of the notice. If the application involves a merger, the applicant should clearly indicate this in the draft notice. If the application contained a request for privileged treatment by the Commission, state this fact in this paragraph of the notice.]

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 _____. 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).

Secretary

The Commission may require the applicant to give such local notice by publication as the Commission in its discretion may deem proper.

§ 33.7 Verification.

The original application must be signed by a person or persons having authority with respect thereto and having knowledge of the matters therein set forth, and must be verified under oath.

§ 33.8 Number of copies.

An original and eight copies of the application under this part must be submitted. If the applicant submits a public and a non-public version (containing information filed under a request for privileged treatment), the original and at least three of the eight copies must be of the non-public version of the filing, pursuant to § 388.112(b)(ii). If the applicant must submit information specified in paragraphs (b), (c), (d), (e) and (f) of § 33.3 or paragraphs (b), (c), (d) and (e) of § 33.4, the applicant must submit all such information in electronic format (*e.g.,* on computer diskette or on CD) along with a printed description and summary. The electronic version must be submitted in accordance with § 385.2011 of the Commission's regulations. The printed portion of the applicant's submission must include documentation for the electronic submission, including all file names and a summary of the data contained in each file. Each column (or data item) in each separate data table or chart must be clearly labeled in accordance with the requirements of § 33.3 and § 33.4. Any units of measurement associated with numeric entries must also be included.

§ 33.9 Protective order.

If the applicant seeks to protect any portion of the application, or any attachment thereto, from public disclosure pursuant to § 388.112 of this chapter, the applicant must include with its request for privileged treatment a proposed protective order under which the parties to the proceeding will be able to review any of the data, information, analysis or other documentation relied upon by the applicant for which privileged treatment is sought.

§ 33.10 Additional information.

The Director of the Office of Markets, Tariffs and Rates, or his designee, may, by letter, require the applicant to submit additional information as is needed for analysis of an application filed under this part.

Note: The following Appendix will not be published in the Code of Federal Regulations.

Appendix—List of Commenters

Abbreviation—Commenter

1. AFPA—The American Forest & Paper Association
2. Antitrust Institute—The American Antitrust Institute
3. APPA/TAPSG—The American Public Power Association/Transmission Access Policy Study Group—Wisconsin Public Power Inc., Electric Cities of North Carolina, Inc., Florida Municipal Power Agency, Illinois Municipal Power Agency, Massachusetts Municipal Wholesale Electric Co., Madison Gas & Electric Co., Michigan Public Power Agency, Municipal Energy Agency of Nebraska, Northern California Power Agency.
4. EEI—Edison Electric Institute
5. FTC Staff—Staff of the Bureau of Economics-Federal Trade Commission
6. Gridco Commenters—Ad hoc group of investment interests represented by Milbank, Tweed, Hadley & McCloy
7. Indiana Counselor—The Indiana Office of Consumer Counselor
8. Industrial Consumers—Electricity Consumers Resource Council, American Iron and Steel Institute, Chemical Manufacturers Association
9. IOU's—LG&E Energy Corp., Northern States Power Cos. (Minnesota and Wisconsin), OGE Energy Corporation, U.S. Generating Co.
10. Morris—J.R. Morris of Economists Inc.
11. Midwest ISO Participants—Cinergy Corp., Commonwealth Edison Co., Wisconsin Electric Power Co., Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Ameren, Kentucky Utilities Co., Louisville Gas & Electric Co., Illinois Power Co., Central Illinois Light Co.
12. Missouri Commission—The Missouri Public Service Commission
13. NARUC—The National Association of Regulatory Utility Commissioners
14. NASUCA—The National Association of State Utility Consumer Advocates
15. New York Commission—The Public Service Commission of the State of New York
16. NRECA—National Rural Electric Cooperative Association
17. Ohio Commission—The Public Utilities Commission of Ohio
18. Sempra—Sempra Energy
19. Southern—Southern Company
20. Sustainable Policy—Project for Sustainable FERC Energy Policy
21. WEPCO—Wisconsin Electric Power Company/Putnam, Hayes & Bartlett, Inc.

[FR Doc. 00–29676 Filed 11–27–00; 8:45 am]

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Federal Register

Tuesday,
November 28, 2000

Part IV

Department of Commerce

Economic Development Administration

13 CFR Part 300, et al.
Implementation of the Economic Development Administration Reform Act of 1998 Including Economic Adjustment Grants-Revolving Loan Funds; Final Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 300, 301, 302, 303, 305, 306, 307, 308, 314, 315, 316 and 317

[Docket No. 001024292–0292–01]

RIN 0610–AA62

Implementation of the Economic Development Administration Reform Act of 1998 Including Economic Adjustment Grants-Revolving Loan Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) is clarifying and further streamlining previously published regulations to implement the Economic Development Administration Reform Act of 1998 and is finalizing its interim-final rule on Economic Adjustment Assistance Revolving Loan Funds.

DATES: *Effective Date:* November 28, 2000.

ADDRESSES: Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, e-mail *elevin@doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998, creating stability and opportunities for EDA to better serve economically distressed communities across the country. On February 3, 1999, EDA published an interim-final rule, Economic Development Administration Regulation: Revision to Implement the Economic Development Reform Act of 1998, Public Law 105–393 (the Reform Act), (64 FR 5347–5486). The public was invited to submit comments on the interim-final rule for a period of sixty (60) days ending April 5, 1999. EDA's final rule without RLF changes was published on December 14, 1999, 64 FR 69867. EDA reviewed comments on the RLF Task Force Recommendations as well as other comments on RLF matters and published an interim-final rule on January 18, 2000, 65 FR 2530, requesting comments on or before March 18, 2000.

Explanation of Changes

A commenter suggested that the table at § 300.3(b), be modified to add the OMB Control Number for the Certification Form filled out and submitted by firms alleging injury due to imports under EDA's Trade Adjustment Assistance Program (see 13 CFR part 315). EDA concurs and has modified the rule by adding Control Number 0610–0091 to the Table at § 300.3(b).

A commenter suggested that § 301.1(b) be modified to add a reference to part 308 as providing for an exception to the requirement for evidence of cooperation (by letter or resolution) with officials of a general purpose political subdivision of a state or an Indian tribe, as applicable when applicant is a nonprofit organization. We concur and have revised the rule accordingly.

A commenter suggested that § 302.1(b) be modified for consistency and clarification to state that strategies required for District designation meet the CEDS requirements under § 303.3. We concur and have modified the rule accordingly.

A commenter suggested that § 302.4 (b)(4) be modified to add the letter ''s'' to the word ''requirement'' when referring to CEDS requirements under part 303. Since this was an inadvertent typographical error, EDA concurs and has corrected the rule accordingly.

A commenter suggested that § 303.2 be modified to state the statutory requirement placed upon any district located in the Appalachian region to ensure that a copy of the CEDS of such district is provided to the Appalachian Regional Commission. We concur and have revised the rule accordingly.

A commenter suggested that Subpart B to part 305—Requirements for Approved Projects, be added to the rule. EDA concurs since this was inadvertently not printed as was intended, and has corrected the rule to include the Subpart to immediately precede ''§ 305.5–Pilot program.''

Commenters suggested that § 305.5 be revised to remove specific references to the Chicago Regional Office's pilot program and certain aspects thereof and to provide instead, without setting any timetables, that Regional Offices, upon approval of the Deputy Assistant Secretary for Program Operations, may institute pilot programs for post-approval construction monitoring, thereby continuing EDA's efforts to streamline and simplify. We concur and have modified the rule accordingly.

A commenter suggested that § 306.1 be revised to state EDA's longstanding policy and practice of supporting partnership planning grants with Districts, Indian Tribes and other eligible applicants, as well as funding short term grants to eligible grantees. We concur and have revised the rule accordingly.

A commenter suggested that § 307.7(c) should be removed because post-approval requirements are found in § 307.12. We concur and have revised the rule accordingly.

A commenter suggested that § § 308.4 (b) and (c)(1)(i) be modified so that not all strategy grants or implementation grants must meet the CEDS requirements under § 303.3, since there might be a non-construction non-CEDS project to develop a non-CEDS strategy or implementation which would not need to follow CEDS requirements to meet the objectives of the Economic Adjustment program. EDA concurs and has changed the rule accordingly.

Commenters suggested that § 308.4(c)(1)(i) be modified for consistency to state that implementation grants for CEDS must meet the CEDS requirements at § 303.3. EDA concurs and has changed the rule accordingly.

A commenter suggested that § 308.5(a) be modified to state that for Technical Assistance under the Economic Adjustment program, when the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a state is satisfied by the nature of the project. We concur and have revised the rule accordingly.

A commenter noted that § 308.9 is not clear about what RLF Plan requirements do not apply to states and political subdivisions of states. EDA concurs and has clarified the rule to indicate what RLF Plan approval requirements must be met by States/political subdivisions of states.

A commenter suggested that § 308.11(a) be modified to state that for a determination of eligibility for new RLF lending areas, such areas must be included in or added to a CEDS in accordance with requirements under § 301.3. EDA concurs and we have modified the rule accordingly.

Commenters suggested that EDA clarify the meaning of § 308.11(a)(1). EDA concurs (this was an inadvertent typographical error) and has rewritten the rule accordingly.

A commenter suggested that § 308.12(b) be modified to add ''Loan

losses should be expense [sic] first to current RLF income after deducting administrative costs. If the net current RLF income is depleted, retained RLF income from previous annual periods may be used with the written approval of EDA.'' EDA does not concur. In accordance with § 308.12(c), RLF income not used for administrative expenses must be added to the capital base for lending. While this can have the effect of compensating or partially compensating for actual loan losses that may occur from time to time, EDA does not believe that expensing losses against RLF income is necessary.

A commenter suggested that § 308.12(d) be modified to cite to the applicable OMB Cost Circular(s) and to list any costs which would be allowable for RLFs with EDA's approval, even though such costs are not allowable under the OMB Circular. It is not possible to develop such a list in advance because any extraordinary costs that might be allowed, with EDA's approval, would be handled on a case by case basis. We have, however, revised the rule to cite the applicable OMB Cost Circulars.

A commenter suggested that § 308.14(a) be modified to allow those RLFs that have received recapitalization funds within the past two years, and have successfully managed and reported on previously awarded RLF funds for more than two years, to report on an annual basis for all funds. EDA does not concur. EDA's grant monitoring responsibility requires semi-annual reports from all active grants in their disbursement phase plus one year, after which EDA will consider a request to submit annual reports.

A commenter suggested that § 308.17(c) be modified to allow for securitization of loan funds, as well as borrowing to generate additional capital with EDA approval. EDA does not concur that a change to the regulation is necessary to allow securitization. EDA's definition of securitization is intentionally sufficiently broad to permit, with EDA approval, other similar activities, such as collateralized borrowing. In granting approval for such activities, EDA can suspend the capital utilization standard of § 308.17(c) as necessary to allow the leveraged/borrowed funds to be lent. Note that the definition of the term ''Securitization'' at § 308.8, is also applicable to § 314.10.

A commenter suggested that § 308.18, introductory paragraph, be revised to delete the word ''agreement'' (after ''loan'') and to insert instead, the word ''application'. EDA does not agree because the loan purpose should be noted directly or by reference in the loan agreement.

A commenter suggested that EDA revise § 308.18(c) (credit otherwise available) to include a provision allowing RLFs to provide incentive financing for specific community objectives in rural areas to attract business, eliminate blight, and revitalize downtown areas and that this suggested revision not supersede specific uses and terms of RLF loan proceeds previously granted by EDA. EDA does not concur. EDA authority to approve variances is sufficiently broad to accommodate case by case circumstances as described by the commenter.

A commenter suggested that EDA establish a permanent RLF working group composed of RLF managers and representatives from other federal loan fund programs. EDA does not agree that a working group should be established by regulation. EDA is committed to the development of better communications between the Agency and the RLF community utilizing other vehicles.

A commenter suggested that the authority citation for parts 315 and 316 be corrected to refer to 19 U.S.C. 2341 (instead of 19 U.S.C. 2391), to remove a reference in part 315 to Executive Order 12372 as unnecessary, to remove a reference in part 315 to 42 U.S.C. 5141 as incorrect, and to add a reference to 42 U.S.C. 5141 to part 316. We concur and have modified the rule accordingly.

A commenter suggested that § 315.9 be modified to include standards for certification of firms on the basis of interim employment decline or an interim decrease in sales or production to codify longstanding EDA policy and practice. We concur and have modified the rule accordingly.

A commenter suggested that § 316.9(c) be modified to provide for the possibility of project changes when no-year funds are involved. We concur and have modified the rule accordingly.

A commenter suggested that § 317.1(f)(3)(vi) concerning required information about employees of EDA assisted planning organizations, be revised to correct an inadvertent typographical error by deleting the word ''data'' and inserting in lieu thereof, the word ''date''. We concur and have modified the rule accordingly.

A commenter suggested that § 317.1(f)(5) concerning annual civil rights compliance reviews for districts and other planning organizations, be revised to correct an inadvertent typographical error by deleting the reference to requirements under paragraph (f)(3), and inserting in lieu thereof, reference to requirements under paragraph (f)(4). We concur and have modified the rule accordingly.

Executive Order 12866 and 12875

This rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of Executive Order 12875, Enhancing Intergovernmental Partnership, this final rule will not impose any unfunded mandates upon state, local, and tribal governments.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule imposes no new information collection or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), as amended, and has been cleared under OMB's clearance process under OMB approval numbers 0610–0093, 0610–0094, and 0610–0096, valid until November 30, 2002, and 0610–0095 valid until August 31, 2002.

Administrative Procedure Act (APA)

This rule is exempt from the rulemaking requirements of the APA, see 5 U.S.C. 533, pursuant to authority at 5 U.S.C. 533(a)(2).

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

List of Subjects

13 CFR Part 300

Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

13 CFR Part 301

Community development, Grant programs—housing and community development.

13 CFR Part 302

Community development, Grant programs—business, Grant programs—

housing and community development, Technical assistance.

13 CFR Part 303

Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements.

13 CFR Part 305

Community development, Community facilities, Grant programs—housing and community development.

13 CFR Part 306

Community development, Grant programs—housing and community development.

13 CFR Part 307

Business and industry, Community development, Grant programs—business, Grant programs—housing and community development, Research, Technical assistance.

13 CFR Part 308

Business and industry, Community development, Community facilities, Grant programs—business, Grant programs—housing and community development, Manpower training programs, Mortgages, Reporting and recordkeeping requirements, Research, Technical assistance.

13 CFR Part 314

Community development, Grant programs—housing and community development.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs—business, Grant programs—housing and community development, Technical assistance, Trade adjustment assistance.

13 CFR Part 316

Community development, Community facilities, Environmental protection, Freedom of information, Grant programs—housing and community development, Loan programs—business, Loan programs—housing and community development, Reporting and recordkeeping requirements.

13 CFR Part 317

Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

Accordingly, 13 CFR Chapter III is amended as set forth below, and the interim final rule amending 13 CFR Parts 308 and 314, which was published at 65 FR 2530 on January 18, 2000, is adopted as final with the following changes:

PART 300—GENERAL INFORMATION

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

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 300.3 is amended by revising paragraph (b) to read as follows:

§ 300.3 OMB control numbers.

* * * * *

(b) Control number table:

13 CFR part or section where identified an described	Current OMB control No.
301	0610–0094
302	0610–0094
303	0610–0093
304	0610–0094
305	0610–0094 and 0610–0096
306	0610–0094
307	0610–0094
308	0610–0094 and 0610–0095
314	0610–0094
315	0610–0091 and 0610–0094
316	0610–0094

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 301.1 is amended by revising paragraph (b) to read as follows:

§ 301.1 Applicants.

* * * * *

(b) Except as otherwise provided in parts 307 and 308 of this chapter, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by, an authorized representative of a general purpose political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 302.1 is amended by revising paragraph (b) to read as follows:

§ 302.1 Designation of Economic Development Districts.

* * * * *

(b) It has an EDA approved strategy which meets CEDS requirements under § 303.3 of this chapter.

* * * * *

3. Section 302.4 is amended by revising paragraph (b)(4) to read as follows:

§ 302.4 District organization functions and responsibilities.

* * * * *

(b) * * *

(4) Comply with the requirements of part 303 of this chapter.

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 303.2 is amended by adding paragraph (g) to read as follows:

§ 303.2 Planning process.

* * * * *

(g) If any part of a district is in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)) the district shall ensure that a copy of the district's CEDS is provided to the Appalachian Regional Commission.

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. The heading for Subpart B is revised to read as follows:

Subpart B—Requirements for Approved Projects

3. Section 305.5 is revised to read as follows:

§ 305.5 Pilot program.

(a) EDA's Regional Offices may, upon approval of the Deputy Assistant Secretary for Program Operations, institute pilot programs for post-approval construction monitoring, thereby continuing EDA's efforts to

streamline and simplify procedures for monitoring approved EDA construction projects. The knowledge and efficiencies gained from the pilot programs will be evaluated and used to improve and revise EDA's post-approval project management requirements and procedures.

(b) As part of a pilot program, the procedures developed by a Regional Office may vary from those listed in this subpart B. No additional requirements are imposed by pilot program procedures. A Regional Office will provide guidelines, in its version of the ''Requirements for Approved Projects,'' to all recipients of grants for construction projects monitored by the Office. The recipient may not be required to submit to EDA certain documentation at any set time, but will be required to maintain all documentation supporting any and all certifications submitted to the Regional Office, for the period of time provided in 15 CFR part 14 or 24, as appropriate.

4. Section 305.19 is amended by revising paragraph (d) to read as follows:

§ 305.19 Contract change orders.

* * * * *

(d) When a change order is for a project funded with one-year funds, EDA approval of such change order must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

PART 306—PLANNING ASSISTANCE

1. The authority citation for part 306 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 306.1 is amended by revising the introductory text to read as follows:

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. EDA's planning assistance is for partnership planning grants with Districts, Indian Tribes and other eligible applicants, as well as for short term grants to eligible grantees. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

* * * * *

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

1. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 307.7 [Amended]

2. Section 307.7 is amended to remove paragraph (c) and to redesignate paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

1. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 308.4 is amended by revising paragraphs (b) and (c)(1)(i) to read as follows:

§ 308.4 Selection and evaluation factors.

* * * * *

(b) *Strategy grants.* EDA will, as appropriate, review strategy grant applications for assurances that the proposed activities will conform to the CEDS requirements in § 303.3 of this chapter.

(c) *Implementation Grants.* (1) * * *

(i) If appropriate, strategy meets the CEDS requirements in § 303.3 of this chapter.

* * * * *

3. Section 308.5 is amended by revising paragraph (a) to read as follows:

§ 308.5 Applicant requirements.

* * * * *

(a) Include evidence of area and applicant eligibility (see part 301 of this chapter). For Technical Assistance under the Economic Adjustment program, if the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

* * * * *

4. Section 308.9 is amended by revising the introductory text to read as follows:

§ 308.9 Revolving Loan Fund Plan.

All RLF recipients must manage RLFs in accordance with an RLF Plan (Plan) as described in this part. For all RLF recipients, the Plan must be submitted to and approved by EDA prior to the grant award. For RLF recipients other than states, the RLF Plan must have been approved by resolution of the organizations' governing board and such resolution must be submitted to EDA along with the Plan prior to the grant award; with EDA's approval, political subdivisions of states may be exempted from the resolution requirement.

* * * * *

5. Section 308.11 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 308.11 Lending areas and modification of lending areas.

(a) The economic activity and benefits of RLF loans must be located within the eligible areas identified in the grant award. For a determination of eligibility for new RLF lending areas, such areas must be included in or added to a CEDS in accordance with requirements under § 301.3 of this chapter.

(1) Where such RLFs have a grant condition that permits new areas that subsequently become eligible to be added to the lending area, RLFs that were awarded assistance (RLF capitalization or recapitalization) before February 11, 1999, whether fully disbursed or not, and fully disbursed RLFs that were awarded assistance (RLF capitalization or recapitalization) on or after February 11, 1999, may add such areas with EDA approval.

* * * * *

6. Section 308.12 is amended by revising paragraph (d) to read as follows:

§ 308.12 Revolving Loan Fund income.

* * * * *

(d) RLF recipients must comply with applicable OMB cost principles (as found in OMB Circular A–87 for State, Local or Indian tribal governments, OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals, or organizations named in OMB Circular A–122 as not subject to that circular, and OMB Circular A–21 for educational institutions) and with RLF Audit Guidelines (as found in OMB Circular A–133, Single Audit Act Requirements for State and Local Governments, Indian tribal governments, Institutions of Higher Education and Other Nonprofit Organizations, or the Compliance Supplement, as appropriate) when charging costs against RLF income. For

availability of OMB circulars, see 5 CFR 1310.3.

* * * * *

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

1. The authority citation for part 315 is revised to read as follows:

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341, *et seq.*; Department of Commerce Organization Order 10–4.

2. Section 315.9 is revised to read as follows:

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) Based upon a comparison of the most recent 12 month period for which data are available and the immediately preceding 12 month period, the following conditions have been met:

(1) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(3) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports; or

(b) Based upon an interim sales or production decline, the following conditions have been met:

(1) There has been an absolute decrease in sales or production for, at minimum, a three month period during the most recent 12 month period for which data are available as compared to the same period of time during the immediately preceding 12 month period;

(2) During the same base and comparative period of time as the period of absolute decrease in sales or production, a significant number or proportion of workers in such firm have become totally or partially separated; and

(3) During the same base and comparative period of time as the period of absolute decrease in sales or production, there has been an increase of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm which contributed importantly to such total or partial separation, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation, or decline in sales or production would have been essentially the same irrespective of the influence of imports; or

(c) Based upon an interim employment decline, the following conditions have been met:

(1) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated during, at a minimum, the most recent month during the most recent 12 month period for which data are available as compared to the same period of time during the immediately preceding 12 month period; and

(2) Either sales or production, or both of the firm have decreased absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(3) There has been an increase of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm which contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for part 316 is revised to read as follows:

Authority: 42 U.S.C. 3211, 42 U.S.C. 5141; 19 U.S.C. 2341, *et seq.*, Department of Commerce Organization Order 10–4.

2. Section 316.9 is amended by revising paragraph (c) to read as follows:

§ 316.9 Amendments and changes.

* * * * *

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. Projects funded with no year funds are not subject to the change of scope rule.

PART 317—CIVIL RIGHTS

1. The authority citation for part 317 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 2000d–1; 29 U.S.C. 794; 42 U.S.C. 3123; 42 U.S.C. 6709; 20 U.S.C. 1681; 42 U.S.C. 6101; Department of Commerce Organization Order 10–4.

2. Section 317.1 is amended by revising paragraphs (f)(3)(vi) and (f)(5)to read as follows:

§ 317.1 Civil rights.

* * * * *

(f) * * *

(3) * * *

(vi) A list of employees on the staff of the organization by name, position title, salary, funding source, and hiring date, indicating race, sex, national origin, and age; and

* * * * *

(5) In order to determine whether districts and other planning organizations supported by EDA are complying with the requirements in paragraph (f)(4) of this section, EDA shall conduct annual compliance reviews of these organizations through either an in-depth desk audit or onsite review.

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Dated: November 15, 2000.

Arthur C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 00–29957 Filed 11–27–00; 8:45 am]

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Tuesday,
November 28, 2000

Part V

Department of Housing and Urban Development

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (ROSS) Grants to Support Public Housing Apprenticeship Activities in the Construction Trades and Public Housing Operations; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4628–N–01]

Notice of Funding Availability: Resident Opportunities and Self Sufficiency (ROSS) Grants to Support Public Housing Apprenticeship Activities in the Construction Trades and Public Housing Operations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* The Resident Opportunities and Self Sufficiency (ROSS) Program links services to public housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self sufficient. This NOFA announces HUD's intention to award to eligible housing authorities grants to support employment and training opportunities for residents living in public housing through Apprenticeship activities and programs. As part of the ROSS program, the Public Housing apprenticeship related grants will provide job training and ensure bonafide apprenticeship and employment opportunities in the construction trades and public housing operations that will lead to self sufficiency for public housing residents. This NOFA provides guidelines for the use of these funds. Under this program announcement, applicants will establish programs that will lead to program participants being enrolled in apprenticeship programs registered by the Department of Labor, Bureau of Apprenticeship and Training (BAT) or a BAT-recognized State Apprenticeship Agency (SAC). The term of awards under this NOFA shall not exceed three years.

Available Funds. Approximately $3 million is being made available for the Public Housing Apprenticeship Program under this NOFA.

Eligible Applicants. Public Housing Agencies (PHAs).

Application Deadline. Applications are due February 26, 2001.

Match. A match of at least 25% of the grant amount must be included as part of the proposal from a partner. This match does not have to be a cash match. The match may be in-kind and/or cash.

I. Application Due Date, Application Kit, Further Information and Technical Assistance

Application Due Date. Your completed application (one original and two copies) is due on or before 12:00 midnight, Eastern time, on February 26, 2001.

Address for Submitting Applications. Submit the original and one copy of your application to Grants Management Center (GMC), 501 School Street, SW, Suite 800, Washington, DC 20024.

Submit the second copy of your application to the local HUD Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public Housing. See Appendix A to this NOFA for a list of HUD offices with delegated responsibility. The original application and one copy must be sent to the GMC.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. For ease of reference, the term ''local HUD Field Office'' will be used throughout this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Delivered Applications. If you are hand delivering your application, your application is due on or before 5:00 p.m., Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC. A copy is also to be submitted by the applicant to the local HUD Field Office.

This application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Mailed Applications. Applications sent by U. S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

Applications Sent by Overnight Delivery. Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application in connection with this NOFA.

On the application due date, hand carried applications will be accepted until 12:00 midnight in the South Lobby at HUD Headquarters, 451 Seventh Street, SW., Washington, DC 20410.

For Further Information and Technical Assistance. You may contact the local HUD field office where you will be submitting your application or you may call the Public and Indian Housing Information and Resource Center at 1–800–955–2232.

For Further Information Contact: Paula O. Blunt, Director, Office of Customer Services and Amenities, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4226, Washington, DC 20410, telephone number (202) 619–8201. (This is not a toll free number.) Hearing- or speech-impaired persons may contact the Federal Information Relay Service on (202) 708–9300 or 1–800–877–8339 (this is a toll free number) for information on the program.

II. Authority, Purpose, Amount Allocated and Eligibility

(A) *Authority.* Funding for the ROSS Program is provided in the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act for Fiscal Year 1999 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the FY 1999 Appropriations Act).

(B) *Purpose.* The ROSS program links services to public housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self sufficient.

In an effort to address ''Welfare to Work'' and to promote economic self sufficiency for public housing residents, the Department is undertaking an initiative under ROSS to support public housing apprenticeship activities in the construction trades and public housing operations.

Public housing agencies, in performing their property management function, manage operations related to construction, repair and maintenance, renovation, demolition, vacant-unit rehabilitation, removal of toxic substances, and the abatement and in-place management of lead-based paint and dust.

In addition, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities

for Low and Very-Low Income Persons) requires PHAs, their contractors and subcontractors to make their best effort to give low- and very-low income persons the training and employment opportunities generated by development and operating assistance and modernization grants.

The purpose of the Public Housing Apprenticeship Program is to provide training and educational opportunities, pre-apprenticeship activities, apprenticeship activities, supportive services and employment opportunities to public housing residents in collaboration with labor management organizations and/or sponsors of registered apprenticeship programs. Apprenticeship programs serving public housing residents may also need to provide preparatory courses and supportive services in order for the participants to successfully complete the apprenticeship program and compete in the job market. The objective of such preparatory courses are to ready the participants for more intensive occupational skills training that will follow. This program allows for such activities.

Eligible PHAs will create partnerships with labor management organizations and/or other sponsors of registered apprenticeship programs. Prospective or potential partners may also include affiliates of labor management organizations. These labor management organizations and/or other sponsors of registered apprenticeship programs must subsequently recruit, train, mentor, provide work experience, and place public housing residents in apprenticeship programs registered by the Department of Labor, Bureau of Apprenticeship and Training (BAT) or a BAT-recognized State Apprenticeship Agency (SAC).

Under an executed Memorandum of Understanding (MOU), participating labor management organizations and/or other sponsors of registered apprenticeship programs shall assume a leadership role and primary responsibility for organizing local multi-employer associations to support the proposed apprenticeship training activities and provide avenues for permanent employment.

If training takes place on public housing developments, Federal labor standards apply to laborers and mechanics employed on public housing developments. Specifically, where laborers and mechanics (other than apprentices registered in an apprenticeship program registered with a BAT or a SAC) are employed on public housing developments as they work with the apprentices, they must be paid Davis-Bacon prevailing wage rates if they are employed in development work or they must be paid HUD-determined wage rates if they are employed in the operation of the housing, unless they qualify as volunteers under 24 CFR part 70.

(C) *Amount Allocated.* This NOFA announces the availability of $3 million of ROSS funds for the Public Housing Apprenticeship Program. ROSS grant awards to support the Public Housing Apprenticeship Program will range from $250,000 to $500,000. See Section IV (D) and (E) for specific information on Negotiations and Adjustments to Funding.

(D) *Eligible Applicants.* Eligible applicants are PHAs.

(E) *Eligible Program Participants.* At least 75% percent of the persons participating and receiving benefits from this apprenticeship program must be residents of conventional public housing; and any other persons (up to 25% percent per grantee) participating or receiving benefits from these programs must be recipients of Section 8 assistance. In addition, you must provide a certification that at least 51 percent of those served by your proposed activities are residents affected by welfare reform.

Program participants must be public housing residents and may include adults as well as youth age 16 to 24 years of age.

Upon completion of the registered apprenticeship program, job placement must be provided for successful program participants.

The Public Housing Apprenticeship Program does not impose any additional requirements related to existing Federal and State wages and benefits, labor standards, and nondiscrimination requirements. If training takes place on public housing developments, Federal labor standards apply to laborers and mechanics employed on public housing developments. Specifically, where laborers and mechanics (other than apprentices registered in an apprenticeship program registered with a BAT or a SAC) are employed on public housing developments as they work with the apprentices, they must be paid Davis-Bacon prevailing wage rates if they are employed in development work or they must be paid HUD-determined wage rates if they are employed in the operation of the housing, unless they qualify as volunteers under 24 CFR part 70.

Successful applicants must provide reasonable accommodations to individuals with disabilities who wish to participate in the programs and activities funded under this NOFA. Housing agencies participating in this apprenticeship program will not be prevented from using funds from non-Federal sources to increase wages and benefits under the program, if appropriate.

(F) *Eligible Activities.* Eligible activities include:

(1) Creation of partnerships between eligible PHAs and labor management organizations and/or other sponsors or prospective sponsors of registered apprenticeship programs. These PHA partner organizations must subsequently recruit, train, mentor, provide work experience, and place public housing residents in Department of Labor (DOL) or SAC-approved apprenticeship programs;

(2) Training costs associated with the acquisition, rehabilitation, or construction of the housing and related facilities to be used in the program. Training skills may include, but are not limited to, construction, repair and renovation that are related to the physical needs of public housing, such as the replacement and repair of equipment and fixtures, vacant unit rehabilitation, removal of toxic substances and lead-based paint abatement;

(3) Education, job training, counseling, english as a second language, driver's training, employment and leadership development services and other activities, that are related to the needs of participants to carry out this program;

(4) Supportive services, transportation costs, and child care costs, as needed while the participant is enrolled in the program; and

(5) Wages, benefits and stipends for participants receiving preparatory training or education required prior to entering a registered apprenticeship program or an employment opportunity.

(G) *Ineligible Activities.* (1) Funds under the public housing apprenticeship program may not be used as wages for permanent employment;

(2) No more than 20 percent of the total grant amount may be used for administrative costs.

(3) Wages, benefits and stipends for participants while participating in an apprenticeship program or an employment opportunity.

III. General Requirements

(A) General Program Requirements

(1) *Compliance With Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in

24 CFR 5.105(a). If an applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved the charge, lawsuit, or letter of findings.

(2) HUD will not rank and rate your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(3) *Additional Nondiscrimination Requirements.* In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of The Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*)

(4) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* All applicants must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in connection with assisted developments) and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E of this part. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low-income persons.

(B) Definitions

Registered Apprenticeship Program means a formalized, structured training program approved and registered by the United States Department of Labor, Bureau of Apprenticeship and Training (BAT), or by a BAT-recognized State Apprenticeship Agency (SAC), as meeting the basic standards and requirements for approval of such programs as set forth in 29 CFR part 29.

Pre-Apprenticeship program as used herein means a course of preparatory training and/or work experience for participants in advance of individual registration in a BAT- or SAC approved apprenticeship program. Pre-apprenticeship is an organized course(s) in which candidates will be selected for a limited term of intensified training with the intent to place them into a registered apprenticeship upon completion or soon after completion of the pre-apprenticeship course. Useful skills, such as construction orientation, math and literacy skills, tool identification and care, construction trade terminology, basic safety, life skills, etc. are usually part of the pre-apprenticeship training provided.

Registered Apprenticeship Program Sponsors provide access to apprentice positions for residents living in public housing where they are employed and receiving wages while they receive formalized, structured on-the-job training and classroom instruction which lead to journeyman status in highly skilled trades or maintenance operations.

Memorandum of Understanding is an agreement executed by the PHA and by the labor management organizations and/or others as partners who will undertake collaborative efforts to address the needs of public housing residents seeking access to registered apprenticeship positions through proper preparation to help candidates meet the basic entry requirements for apprenticeship.

IV. Application Selection Process for Public Housing Apprenticeship Activities

(A) Three types of reviews will be conducted: A screening to determine if your application submission is complete and on time; a threshold review to determine applicant eligibility; and a technical review to rate your application based on the five rating factors provided in this section. A minimum score of 75 is required to be considered for funding.

(B) The selection process is designed to achieve geographic diversity of grant awards throughout the country. HUD will first select the highest ranked application in each of the ten federal regions for funding. After this ''round,'' HUD will select the second highest ranked application in each of the ten federal regions for funding (the second round). HUD will continue this process with the third, fourth, and so on, highest ranked applications in each federal region until the last complete round is selected for funding. If available funds exist to fund some but not all eligible applications in the next round, HUD will make awards to those remaining applications in rank order regardless of region and will fully fund as many as possible with remaining funds.

(C) *Factors for Award Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 102. This includes two bonus points for Empowerment Zones (EZs)/Enterprise Communities (ECs). A certification must be completed for the applicant to be considered for EZ/EC bonus points. For a listing of federally designated EZs and ECs see Appendix B. An application must receive a total of 75 points out of 100 to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed apprenticeship activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) Proposed Program Staffing (7 Points)

(a) *Experience.* (4 Points) The knowledge and experience of your proposed project director and staff, including the day-to-day program manager, and partners in planning and managing programs for which funding is being requested. Your experience will be judged in terms of recent, relevant and successful experience to undertake eligible program activities.

(b) *Sufficiency.* (3 Points) You and your partners have sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and

effective fashion, including your readiness and ability to immediately begin the proposed work program. To demonstrate sufficiency, you must submit the proposed number of staff years to be allocated to your program by employees and experts, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to your program, and the roles to be performed by each identified employee and expert.

(2) Program Administration and Fiscal Management (7 Points)

(a) *Program Administration.* (4 Points) The soundness of the proposed management of your proposed Apprenticeship Program. To receive a high score, you must provide a comprehensive description of your project management structure. Your narrative must provide a description of how you and your other partners relate to the program administrator as well as the lines of authority and accountability among all components of your proposed apprenticeship program.

(b) *Fiscal Management.* (3 Points) The soundness of your proposed fiscal management. To receive a high score you must provide a comprehensive description of the fiscal management structure, including, but not limited to, budgeting, fiscal controls, and accounting. The application must identify the staff responsible for fiscal management, and the processes and timetable for implementation during the proposed grant period.

(3) Applicant/Administrator Track Record (6 Points)

To receive a high score, you must demonstrate your (or your proposed Administrator's) program compliance and successful implementation of any resident self-sufficiency, security or independence oriented grants (including those listed below) awarded to you or overseen by your Administrator. If you or your Administrator has no prior experience in operating programs that foster resident self-sufficiency, security or independence you will receive a score of 0 on this factor. Your past experience may include, but is not limited to, administering the following grants: Family Investment Center Program; Youth Development Initiative under Family Investment Center Program; Youth Apprenticeship Program; Apprenticeship Demonstration in the Construction Trades Program; Urban Youth Corps Program; HOPE I Program; Public Housing Service Coordinator Program; Public Housing Drug Elimination Program; Tenant Opportunities Program; Economic Development and Supportive Services; Youth Sports Program; and Resident Opportunities and Self Sufficiency (ROSS) Program.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding your proposed apprenticeship program activities to address a documented problem in the target area. You will be evaluated on the extent to which you document a critical level of need in the development or your proposed activities in the area where activities will be carried out. In responding to this factor, you will be evaluated on:

(1) A Needs Assessment Document (18 Points)

HUD will award up to 18 points based on the quality and comprehensiveness of the needs assessment document. To obtain maximum points for your application, this document must contain statistical data which provides:

(a) A thorough socioeconomic profile of the eligible residents to be served by your program, in relationship to PHA-wide and national public and assisted housing data on residents who are on TANF (temporary assistance for needy families), SSI benefits, or other fixed income arrangements; in job training, entrepreneurship, or community service programs; and employed;

(b) Specific information on training, contracting, and employment through the PHA.

(c) An assessment of the current service delivery system as it relates to the needs of the target population, including the number and type of services, the location of services, and community facilities currently in use; and

(d) A description of the goals, objectives, and program strategies that will result in the successful transition of residents from welfare-to-work and a description of how eligible participants will be recruited.

(2) Level of Priority in Consolidated Plan (2 Points)

Documentation of the level of priority the locality's, or in the case of small cities, the State's, Consolidated Plan has placed on addressing the needs. You may also address needs in terms of fulfilling the requirements of court actions or other legal decisions or which expand upon the Analysis of Impediments to Fair Housing Choice (AI) to further fair housing. If you address needs that are in your community's Consolidated Plan, AI, or a court decision, or identify and substantiate needs in addition to those in the AI, you will receive a greater number of points than applicants who do not relate their proposed program to the approved Consolidated Plan or AI or court action. There must be a clear relationship between your proposed activities, community needs and the purpose of the program funding for you to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of your proposed apprenticeship work plan. In rating this factor HUD will consider: the viability and comprehensiveness of your strategies to address the needs of residents; budget appropriateness/efficient use of grant; the speed at which you can realistically accomplish the goals of the proposed apprenticeship program; the soundness of your plan to evaluate the success of your proposed apprenticeship program at completion and during program implementation; and resident and other partnerships; and policy priorities.

(1) Viability and comprehensiveness of the strategies to address the needs of residents (15 Points)

The score under this sub-factor will be based on the viability and comprehensiveness of your strategies to address the needs of residents.

Services. (15 Points) The score under this sub-factor will be based on the following:

(i) The extent to which your plan provides services that specifically address the successful transition from welfare to work of residents. To receive a high score, your plan must include case management/counseling, job training/development/placement, child care, and transportation services, as needed.

(ii) A description of training and placement activities for the registered apprenticeship program;

(iii) A description of efforts to provide job placement for participates in the registered apprenticeship program;

(iv) A description of how program participants' supportive services needs will be met;

(v) Specifically, for those residents affected by welfare reform, the number of residents to receiving training, or the number of residents to be employed.

(2) Budget Appropriateness/Efficient Use of Grant (5 Points)

The score in this factor will be based on the following:

(a) *Detailed Budget Break-Out.* The extent to which your application includes a detailed budget break-out for each budget category in the SF–424A.

(b) *Reasonable Administrative Costs.* The extent to which your application includes administrative costs at or below the 20% administrative cost ceiling.

(c) *Budget Efficiency.* The extent to which your application requests funds commensurate with the level of effort necessary to accomplish your goals and anticipated results.

(3) Reasonableness of the Timetable (2 Points)

The score in this factor will be based on a reasonable response that you can accomplish the goals of your proposed apprenticeship program. To receive a high score, you must demonstrate that it will make substantial program implementation progress within the first six months after grant execution, including putting staff in place, and other milestones that are prerequisites for implementation of the program. In addition, you must demonstrate that your proposed timetable for all components of the proposed program is feasible considering the size of your award and activities and results that can be accomplished within the 36-month time limit.

(4) Program Assessment (13 Points)

The score in this factor will be based on the soundness of your plan to evaluate the success of your proposed apprenticeship program both at the completion of your program and during program implementation. At a minimum, you must track the goals and objectives of your proposed work plan program, which must include, if applicable, a plan for monitoring your Contract Administrator's performance. Your application should track specific measurable achievements for the use of these program funds, such as the number of persons successfully completing training, pre-apprenticeship programs, and registered apprenticeship training programs, number of residents placed in permanent employment, salary scales of jobs obtained, the number of persons removed from welfare rolls and section 3 compliance.

(5) Resident Involvement in Apprenticeship Activities (5 Points)

The score in this factor will be based on the extent of resident involvement in developing your proposed apprenticeship program as well as the extent of proposed resident involvement in implementing your proposed apprenticeship program. To receive a high score on this factor, you must describe the involvement of residents in the planning phase for this program, and a commitment to provide continued involvement in grant implementation. For applicants to receive the maximum number of points, a work plan, must be included.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources (note: financing is a community resource) that can be combined with HUD's program resources to achieve program purposes. You must have at least a 25% cash or in-kind match to receive points under this rating factor. Leveraging in excess of the 25% of the grant amount will receive a higher point value. In evaluating this factor HUD will consider:

The extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed program activities. The budget, the work plan, and commitments for additional resources and services, other than the grant, must show that these resources are firmly committed, will support the proposed grant activities and will, in combined amount (including in-kind contributions of personnel, space and/or equipment, and monetary contributions) equal at least 25% of the apprenticeship grant amount proposed in this application. ''Firmly committed'' means there must be a written agreement with the provider of resources, signed by an official legally able to make commitments on behalf of the organization. The signed, written agreement may be contingent upon you receiving a grant award. Other resources and services may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (not including ROSS funds); funds from any State or local government sources; and funds from private contributions. You may also partner with other program funding recipients to coordinate the use of resources in your target area.

You must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, Memoranda of Understanding, or agreements to participate from those entities identified as partners in the application. To be firmly committed there must be a written agreement with the provider of resources signed by an official legally able to make commitments on behalf of the organization. This agreement may be contingent upon you receiving a grant award. Each letter of commitment, Memorandum of Understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor HUD will consider the extent to which your application addresses:

(1) Coordination With the Consolidated Plan (2 Points)

Demonstrates the applicant has reviewed the community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice, and has proposed activities that address the priorities, needs, goals or objectives in those documents; or affirmatively furthers fair housing choice in the community.

(2) Coordination With Welfare Agencies (8 Points)

Provides evidence that your proposed apprenticeship program supports the PHA's efforts to increase resident self-sufficiency and is consistent with the State, or local Welfare Plan/Agency.

(D) *Negotiation.* After HUD has rated and ranked all applications and has made selections, HUD may require, depending upon the program, that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In this instance, HUD may offer an award to the next highest applicant, and proceed with negotiations with the next highest ranking applicant.

(E) *Adjustments to Funding.* (1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met.

(2) HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirement; which do not meet the requirements of

this NOFA. Only eligible portions of your application may be funded.

(3) If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program. If you, the applicant, turn down the award offer, HUD will make the same determination for the next highest ranking application.

(4) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

V. Application Submission Requirements for the Public Housing Apprenticeship Program

All applications for funding under the Public Housing Apprenticeship Program must contain the following documents and information (Please note that items A–E are threshold requirements used to determine scoring of rating and ranking factors for this NOFA. Please note also that the documents and information should be presented in the application in the order requested):

(A) Your application must contain a written certification that at least 51 percent of the public housing residents (including Section 8 tenants as applicable) to be included in the proposed program are currently eligible to receive, are currently receiving, or have received within the preceding four years, assistance or services funded under the TANF, SSI, or food stamp programs.

(B) Your application must contain letter(s) of support indicating supplemental grant funds of not less than 25% of the grant amount.

(C) You must provide either a signed certification from HUD or an Independent Public Accountant that your financial management system and procurement procedures fully comply with 24 CFR part 85, or your application must contain a signed Contract Administrator Partnership Agreement that you will use the services of a Contract Administrator in administering your grant. Applicants that are troubled PHAs are required to provide evidence that a Contract Administrator has been retained for the term of the grant.

(D) You must certify that your PHA is in compliance with Fair Housing and Civil Rights Laws as discussed in III General Program Requirements section above shall be part of that threshold review.

(E) Your application must contain a signed Memorandum of Understanding (MOU) between the PHA and the participating labor management organization and/or other sponsors of registered apprenticeship programs. The MOU must describe specific roles, responsibilities and activities to be undertaken by the parties including the party that assumes primary responsibility for organizing local multi-employer associations. Your MOU, at a minimum must identify the principal parties (*i.e.,* the name of the PHA and other partners) the terms for each party, and an indication of how the agreement supports the proposed apprenticeship program. The MOU must be precise and outline the specific duties and objectives to be accomplished. All MOUs must be finalized, dated and signed by duly authorized officials of the PHA and its partner(s).

(F) Responses to Factors of Award must be narrative statements or descriptions indicated below and should be submitted in the order presented below and identified by using the titles presented below (*e.g.,* Factor 1—Capacity of the Applicant and Relevant Organizational Experience):

Factor 1—Capacity of the Applicant and Relevant Organizational Experience; Program Staffing
Applicant/Administrator Track Record
Factor 2—Need/Extent of the Problem (including a Budget Work Plan Summary);
Factor 3—Soundness of Approach;
Factor 4—Leveraging Resources; and
Factor 5—Comprehensiveness and Coordination.
Certification of Consistency with the Consolidated Plan Bonus Points
Certification of Consistency with the EZ/EC Strategic Plan

VI. Application Submission Requirements

(A) *All Applications.* All applications for assistance under this ROSS competition for the Public Housing Apprenticeship Program regardless of funding categories must include the following forms, certifications and assurances. These forms are:

SF–424, Application Federal Assistance;
HUD–424M, Federal Assistance Funding Matrix;
SF–424A, Federal Assistance Budget Information—Non Construction;
SF–424B, Assurances for Non-Construction Programs;
HUD Form 50070, Drug-Free Workplace Certification;
HUD Form 50071, Certification of Payments to Influence Federal Transactions, and if applicable SF–LLL, Disclosure of Lobbying Activities;
HUD Form 2880, Applicant/Recipient Disclosure/Update Report;
HUD Form 2992, Certification of Debarment and Suspension;
HUD Form 2993, Acknowledgment of Application Receipt.

(B) *Match Requirement.* (1) You must supplement grant funds with an in-kind and/or cash match of not less than 25% of the grant amount. This match does not have to be a cash match. The match may include: the value of in-kind services, contributions or administrative costs provided to the applicant; funds from Federal sources (but not ROSS funds); funds from any State or local government sources; and funds from private contributions. Any services, such as child care or mentoring, conducted by elderly or disabled residents who are not TANF participants, will not be counted toward your match requirement.

(2) You must demonstrate that the cash or in-kind resources and services, which you will use as match amounts (including resources from a Comprehensive Grant Program, other governmental units/agencies of any type, and/or private sources, whether for-profit or not-for-profit), are firmly committed and will support the proposed grant activities. ''Firmly committed'' means there must be a written agreement to provide the resources and services signed by an official legally able to make commitments on behalf of the organization and specifies the cash and/or in-kind assistance to be provided.

If offering in-kind assistance, the letter should provide an estimated dollar value for the in-kind services. The written agreement may be contingent upon your receiving a grant award. The following are guidelines for valuing certain types of in-kind contributions:

(a) The value of volunteer time and services shall be computed at a rate of six dollars per hour except that the value of volunteer time and services involving professional and other special skills shall be computed on the basis of the usual and customary hourly rate paid for the service in the community where the activity is located; and

(b) The value of any donated material, equipment, building, or lease shall be computed based on the fair market value at time of donation. Such value shall be documented by bills of sales, advertised prices, appraisals, or other information for comparable property similarly situated not more than one-year old taken from the community where the item or activity is located, as appropriate.

(c) Laborers and mechanics wishing to donate their labor while employed in the development or operation of public housing must meet the requirements of 24 CFR part 70 in order to be considered

volunteers. In such cases, their labor shall be valued in accordance with the Davis-Bacon or HUD-determined wage rate that would otherwise apply to such work.

(C) *Affirmatively Further Fair Housing.* All applicants must provide a statement addressing efforts to affirmatively further Fair Housing. The areas to be addressed in the PHA's statement should include, but not necessarily be limited to:

(1) An examination of the PHA's programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with local jurisdictions to implement any of the jurisdictions initiatives to affirmatively further fair housing that require the PHAs involvement, and maintain records reflecting these analyses and actions;

(2) Remedies used to eliminate housing discrimination; or

(3) Activities used to promote fair housing rights and fair housing choice.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by mail or other delivery service with return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number when assigned will be published by separate notice in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.870.

Federalism Impact

Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section

103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact HUD's Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

IX. Authority

Section 34 of the U.S. Housing Act of 1937 (42 U.S.C. 1437z–6); Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998

Dated: November 21, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Appendix A—HUD's Public Housing Area Offices

HUD Field Offices

New England Region

Boston

James Wallace, Office of Public Housing, DHUD—Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 553, Boston, MA 02222–1092, (617) 565–5197 fax (617) 565–5257

Hartford

Office of Public Housing, DHUD—Connecticut State Office, 19th Floor, One Corporate Center, Hartford, CT 06103–3220, (860) 240–4800 or (860) 240–4850

Manchester

Robin Gagnin, Office of Public Housing, DHUD—New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7470 or fax (603) 666–7714

Providence

James Wallace from Boston (Cri), Office of Public Housing, DHUD—Rhode Island State Office, 10 Weybosset Street, 6th Floor, Providence, RI 02903–3234, (401) 528–5372 or (401) 528–5370

New York/New Jersey Region

New York

Jed Abrams, Office of Public Housing, DHUD—New York State Office, 26 Federal Plaza, Suite 32–116, New York, New York 10278–0068, (212) 264–8931 fax (212) 264–0246

Buffalo

Joan Spilman, Office of Public Housing, DHUD—Buffalo State Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, New York 14203–5755, (716) 551–5919 or -5755 fax (716) 551–5755

New Jersey

Kelly Peterson, Office of Public Housing, DHUD—New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, (973) 622–7900 ext. 3600 fax (973) 645–6239

Mid-Atlantic Region

Philadelphia

Office of Public Housing, DHUD—Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390, (215) 656–0576 or 0579, ext. 3308, fax (215) 656–3433

Baltimore

Dana Johnson, Office of Public Housing, DHUD—Maryland State Office, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (410) 962–2520 ext. 3102 fax (410) 962–0668

West Virginia

Henry Miller, Office of Public Housing, DHUD—West Virginia State Office, Kanawha Valley Building, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, (304) 347–7057 fax (304) 347–7045

Pittsburgh

Office of Public Housing, DHUD—Pittsburgh Area Office, 339 Sixth Avenue, 6th Floor, Pittsburgh, PA 15222–2515, (412) 644–6571 fax (412) 644–6499

Virginia

Yolanda Webster, Office of Public Housing, DHUD—Virginia State Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4500 ext. 3217 fax (804) 278–4603

District of Columbia

Office of Public Housing, DHUD—District of Columbia Office, 820 First Street, NE., Suite 450, Washington, DC 20002–4205, (202) 275–7965 ext 3175 fax (202) 275–0779

Southeast Region

Atlanta

Lesley Ciski, Office of Public Housing, DHUD—Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388, (404) 331–4766 fax (404) 730–2365

Alabama

Debra Pippen, Office of Public Housing, DHUD—Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, #300, Birmingham, AL 35209–4144, (205) 290–7601 ext 1101 fax (205) 290–7593

Columbia

Sylvestor Fulton, Office of Public Housing, DHUD—South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5831 or (806) 765–5515

Greensboro

Judy Hiller, Office of Public Housing, DHUD—North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (336) 547–4038 fax (336) 547–4015

Mississippi

George Smith, Office of Public Housing, DHUD—Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, (601) 965–4761 fax (601) 965–4773

Coral Gables

Georgia Lebron, Office of Public Housing, DHUD—Florida State Office, Gables I Towers, Suite 501, 1320 South Dixie Street, Coral Gables, FL 33146–2911, (305) 662–4589 (alt. 2270) fax (305) 662–4519

Jacksonville

Aisha Williamson, Office of Public Housing, DHUD—Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, (904) 232–1777 ext. 2142 fax (904) 232–3759

Kentucky

Carol Spenser, Office of Public Housing, DHUD—Kentucky State Office, 601 West Broadway, Post Office Box 1044, Louisville, KY 40201–1044, (502) 582–6163 ext. 370 fax (502) 582–6074

Knoxville, TN

Joyce Baker, Office of Public Housing, DHUD—Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, (423) 545–4402 ext. 4 fax (423) 545–4569

Nashville, TN

Karen Gill, Office of Public Housing, DHUD—Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, (615) 736–5063 ext. 6132 fax (615) 736–2886

San Juan, PR

Office of Public Housing, DHUD—Caribbean Office, Administracion de Terrenos Building, 171 Carlos E. Chardon Avenue, Suite 301, San Juan, PR 00916–0903, (787) 766–5400 ext. 2031 fax (787) 766–5995

Mid-West Region

Chicago

Office of Public Housing, DHUD—Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–1915 or (312) 353–6236 ext. 2302 fax (312) 353–0121

Cincinnati

Larry Dempsey, Office of Public Housing, DHUD—Cincinnati Area Office, 525 Vine Street, Suite 700, Cincinnati, OH 45202–3188, (513) 684–2533 fax (513) 684–6224

Cleveland

Office of Public Housing, DHUD—Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–2700 fax (216) 522–2975

Columbus

David Kelner, Office of Public Housing, DHUD—Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5787, ext. 8224 or (614) 469–2949 fax (614) 469–2432

Detroit

Office of Public Housing

DHUD—Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–6880, ext. 8111 fax (313) 226–5611

Grand Rapids

Office of Public Housing, DHUD—Grand Rapids Area Office, 50 Louis Street, NW, 3rd Floor, Grand Rapids, Michigan 49503, (616) 456–2127

Indianapolis

Office of Public Housing, DHUD—Indiana State Office, 151 North Delaware Street, Suite 1200, Indianapolis, IN 46204–2556, (317) 226–6557 fax (317) 226–6317

Milwaukee

Beverly Carter, Office of Public Housing, DHUD—Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, (414) 297–1029 ext. 8212 fax (414) 297–3947

Minneapolis

Lucy Beckwell, Office of Public Housing, DHUD—Minnesota State Office, 220 South Second Street, Minneapolis, Minnesota 55401–2195, (612) 370–3171 ext. 2220 fax (612) 370–3220

Southwest Region

Fort Worth

Roman Palamores, Office of Public Housing, DHUD—Texas State Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, (817) 978–9325, ext. 3332 fax (817) 978–9289

Albuquerque

Carmella Herrera, Office of Public Housing, DHUD—New Mexico State Office, 625 Silver Avenue, S.W., Suite 100, Albuquerque, N.M. 87102–3185, (505) 346–7355 fax (505) 346–6604

Houston

Debbie Alexander, Office of Public Housing, DHUD—Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, (713) 313–2274 (alt. 2280) fax (713) 313–2319

Little Rock

Janie Allen, Office of Public Housing, DHUD—Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 324–5933 fax (501) 324–5900

New Orleans

Janice Manuel, Office of Public Housing, DHUD—Louisiana State Office, 501 Magazine Street, Ninth Floor, New Orleans, LA 70130, (504) 589–7235 fax (504) 589–6619

Oklahoma City

Office of Public Housing, DHUD—Oklahoma State Office, 500 West Main Street, Oklahoma City, OK 73102, (405) 553–7454 fax (405) 553–7588

San Antonio

Office of Public Housing, DHUD—San Antonio Area Office, Washington Square, 800 Dolorasa Street, San Antonio, TX 78207–4563, (210) 475–6865 fax (210) 472–6804

Great Plains Region

Kansas City

Office of Public Housing, DHUD—Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5582 or (913) 551–6916, fax (913) 551–5416

Des Moines

Kathy Winter, Office of Public Housing, DHUD—Iowa State Office, Federal Building, 210 Walnut Street, Room 29, Des Moines, IA 50309–2155, (515) 284–4315 fax (515) 284–4895

Omaha

Charlie Hill, Office of Public Housing, DHUD—Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3137 fax (402) 492–3150

St. Louis

Bob Diesbach, Office of Public Housing, DHUD—St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6505 fax (314) 539–6384

Rocky Mountain Region

Denver

Thomas Washington, Office of Public Housing, DHUD—Colorado State Office, First Interstate Tower North, 633—17th Street, 12th Floor, Denver, CO 80202–3607, (405) 672–5380 fax (405) 672–5061

Pacific Hawaii Region

San Francisco

Tom Bitek, Office of Public Housing, DHUD—California State Office, Phillip Burton Federal Building/Courthouse, 450 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102–3448, (415) 436–8375 fax (415) 436–8375

Phoenix

(Denver Office Handles Resident Initiatives)

Office of Public Housing, DHUD—Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004–2361, (602) 379–3045

Los Angeles

Lydia Morales, Office of Public Housing, DHUD—Los Angeles Area Office, AT&T Center, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, (213) 894–8000 ext 3500 fax (213) 894–8096

Sacramento

Office of Public Housing, DHUD—Sacramento Area Office, 777 12th Street, Suite 200, Sacramento, CA 95814–1997, (916) 498–5220 ext. 421

NW/Alaska Region

Seattle

Office of Public Housing, DHUD—Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 360, Seattle, WA 98104–1000, (206) 220–5290 Ext 3694 fax (206) 220–5133

Portland

Office of Public Housing, DHUD—Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1596, (503) 326–2619 fax (503) 326–2568

Appendix B—EZ/EC Main Contact List

High Performers as of August, 1999

Empowerment Zones (26)

CA, Los Angeles

Robert Perez, City of Los Angeles, Community Development Department, 215 West 6th Street, Third Floor, Los Angeles, CA 90014, 213–485–5725 (Phone), 213–237–0551 (Fax)

David Eder, City of Los Angeles, Community Development Department, 215 West 6th

Street, Third Floor, Los Angeles, CA 90014, 213–485–2956 (Phone), 213–237–0890 (Fax)

CA, Santa Ana, (EZ)

Ms. Cindy Nelson, Executive Director, Community Devel. Agency, 20 Civic Center Plaza—M–25, Santa Ana, CA 92702, 714–647–5360 (Phone), 714–647–6549 (Fax)

CT, New Haven (EZ—EC)

Ms. Diana Edmonds, City of New Haven, 200 Orange Street, 5th Floor, New Haven, CT 06510, 203–946–7727 (Phone), 203–946–8049 (Fax)

FL, Miami/ Dade County (EZ—EC)

Mr. Tony E. Crapp, Sr., Office of Economic Development, 140 West Flagler, Suite 1000, Miami, FL 33130–1561, 305–375–3431 (Phone), 305–375–3428 (Fax)

GA, Atlanta

Mr. Joseph Reid, Exec. Director, Atlanta EZ Corporation, 675 Ponce De Leon Avenue, Second Floor—Suite 2100, Atlanta, GA 30308, www.atlantapd.org/ez/ezfact.html, 404–853–7610 (Phone), 404–853–7315 (Fax)

IL, Chicago

Mr. Ronald Carter, Jr., City of Chicago, 20 North Clark Street, 28th Floor, Chicago, IL 60602, 312–744–9623 (Phone), 312–744–9696 (Fax)

IN, Gary, E. Chicago (EZ)

Mr. Taghi Arshani, Office of Planning & Community Development, 475 Broadway, Suite 318, Gary, IN 46402, 219–881–5075 (Phone), 219–881–5085 (Fax)

KY, Kentucky Highlands EZ—Clinton, Jackson, Wayne Counties

Jerry Rickett, Kentucky Highlands Investment Corporation, 362 Old Whitley Rd., London, KY 40741, 606–864–5175 (Phone), 606–864–5194 (Fax)

MD, Baltimore,

Ms. Diane Bell, Empower Baltimore Management Corporation, 111 S. Calvert Street, Suite 1550, Baltimore, MD 21202, 410–783–4400 (Phone), 410–783–0526 (Fax)

MA, Boston (EZ–EEC)

Ms. Juanita Wade, Chief of Human Services, Suite 603, Boston City Hall, Boston, MA 02201, 617–635–2953 (Phone), 617–635–3496 (Fax)

Mr. Reginald Nunnally, Boston Business Assistance Center, Boston Empowerment Zone 20, Hampden Street, Boston, MA 02119, 617–445–3413 (Phone), 617–445–5675 (Fax)

MI, Detroit

Mr. Paul Bernard, Executive Director, City of Detroit Planning and Development, 2300 Cadillac Tower Building, Detroit, MI 48226, www.ezsis.org/commune/detroit/ez/index.htm, 313–224–6389 (Phone), 313–224–1629 (Fax)

Denise Gray, Executive Director, Detroit Empowerment Zone Corporation, 1 Ford Place, Suite 2D, Detroit, MI 48202, 313–872–8050 (Phone), 313–872–8002 (Fax)

MN, Minneapolis (EZ–EC)

Mr. Ken Brunsvold, Office of Grants & Special Project, 350 South Fifth Street, City Hall, Room 200, Minneapolis, MN 55415, 612–673–2348 (Phone), 612–673–2728 (Fax)

MO, St. Louis/E. St. Louis, IL (EZ–EC)

Mr. Chad Cooper, St. Louis Development Corporation, 105 Locust Street, Ste. 1200, St. Louis, MO 63101, st.louis.missouri.org./enterprise/index.html, 314–622–3400 (Phone), 314–231–2341 (Fax)

IL, East St. Louis (EC ONLY), Mr. Percy Harris, City of East St. Louis, 301 River Park Dr., East St. Louis, IL 62201, 618–482–6642 (Phone), 618–482–6648 (Fax)

NJ, Cumberland CO, (EZ)

Mr. Stephen Kehs, Executive Director, Cumberland County Dept. of Planning and Development, 800 E. Commerce Street, Bridgeton, NJ 08302, 609–453–2175 (Phone), 609–453–9138 (Fax)

New York, NY (Main Contact)

Mr. James Ilaco, Special Counsel and Corporate Secretary, New York Empowerment Zone Corporation, 633 3rd Avenue, New York, NY 10017, 212–803–3240 (Phone), 212–803–3294 (Fax)

NY, New York (Bronx)

Mr. Jose Ithier, Bronx Overall Economic Development Corporation, 198 East 161st Street, Second Floor, Bronx, NY 10451, 718–590–3549 (Phone), 718–590–3499 (Fax)

NY, New York (Upper Manhattan)

Ms. Deborah Wright, Director, Upper Manhattan Empowerment Zone Development Corporation, 290 Lenox Avenue, 3rd Flr., New York, NY 10027, 212–410–0030 (Phone), 212–410–9616 (Fax)

OH, Cincinnati (EZ)

Mr. Timothy Sharp, City Hall, 801 Plum Street, Room 104, Cincinnati, OH 45202, 513–352–2457 (Phone), 513–352–2458/or 513–352–5357 (Fax)

OH, Cleveland

Ms. Yvette Mosby Director, Cleveland Empowerment Zone, 601 Lakeside Avenue, City Hall, Room 335, Cleveland, OH 44114, 216–664–3083 (Phone), 216–420–8522 (Fax)

OH, Columbus (EZ–EC)

Mr. John Beard, Columbus Compact Corporation, 815 East Mound Street, Suite 108, Columbus, OH 43205, www.iwaynet.net/~ccc/ 614–251–0926 (Phone), 614–251–2243 (Fax)

OH, Columbus

Mr. Patrick Grady, Economic Development Administrator, 99 North Front Street, Columbus, OH 43215, 614–645–7574 (Phone), 614–645–7855 (Fax)

PA, Philadelphia/NJ, Camden

Eva Gladstein, Executive Director, City of Philadelphia, 1515 Arch Street, 1 Parkway, 9th Flr., Philadelphia, PA 19103, www.phila.gov/agencies/empower/emzone.html 215–683–0462 (Phone), 215–683–0493 (Fax)

Mr. Richard Cummings, Chairperson, Camden Empowerment Zone Corporation, 412 North Second Street, Camden, NJ 08104, 609–541–2836 (Phone), 609–541–8457 (Fax)

Mr. Brian Finnie, City of Camden Empowerment Zone Corp., 800 Hudson Square, Suite 300, Camden, NJ 08102, 609–365–0300 (Phone), 609–365–1058 (Fax)

SC, Sumter, Columbia (EZ)

Ms. Leona Plaugh, Assistant City Manager, City of Columbia, Dept. of Community Service, 1225 Laurel Street, Columbia, SC 29201, 803–733–8313 (Phone), 803–733–8312 (Fax)

TN, Knoxville (EZ)

Ms. Jeanette Kelleher, Community Development Administrator, City/County Building, 400 Main Street, Room 514, Knoxville, TN 37902, 423–215–2120 (Phone), 423–215–2962 (Fax)

TX, Rio Grande Valley EZ (Cameron, Hidalgo, Starr, Willacy Counties)

Bonnie Gonzalez, Rio Grande Valley Empowerment Zone, 301 S. Texas, Mercedes, TX 78570, 210–514–4000 (Phone), 210–514–4007 (Fax)

TX, El Paso (EZ–EC)

Ms. Deborah G. Hamlyn, City of El Paso, #2 Civic Center Plaza, 9th Floor, El Paso, TX 79901–1196, 915–541–4643 (Phone), 915–541–4370 (Fax)

VA, Norfolk/Portsmouth (EZ–EC)

Ms. Eleanor R. Bradshaw, Norfolk Works, 201 Granby Street, Ste. 100A, Norfolk, VA 23510, 757–624–8650 (Phone), 757–622–4623 (Fax)

WV, Huntington/Ironton, OH (EZ–EC)

Ms. Cathy Burns, Community Development and Planning, 800 Fifth Avenue, Suite 14, P.O. Box 1659, Huntington, WV 25717, 304–696–4486 (Phone), 304–696–4465 (Fax)

Enhanced Enterprise Communities (4)

CA, Oakland

Mr. William Claggett, Executive Director, Kathy Kessler, Spec. Assistant, Community & Economic Devel. Agency, City of Oakland, 250 Frank H. Ogawa Plaza, Ste. 3330, Oakland, CA 94612–2032, 510–238–3303 (Phone), 510–238–6538 (Fax)

Mr. Lonnie Carter, Community & Economic Devel. Agency, City of Oakland, 250 Frank H. Ogawa Plaza, Ste. 3315, Oakland, CA 94612–2032, 510–238–3716 (Phone), 510–238–6956 (Fax)

KS, Kansas City and MO, Kansas City (EEC-Strategic Planning Comm.)

Mr. Cal Bender, MARC, 600 Broadway, 300 Rivergate Center, Kansas City, MO 64105–1554, 816–474–4240 (Phone), 816–421–7758 (Fax)

MA, Boston (See EZ)

TX, Houston

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Federal Register

Tuesday,

November 28, 2000

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2001 Specifications; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–0328–01; I.D. 111500C]

RIN 0648–AN71

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2001 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2001 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each fishery and to provide an opportunity for public comment. This proposed rule requests comment on proposed measures for summer flounder and black sea bass and on four alternative management options for the 2001 scup fishery. The intent is to specify the allowed harvest in 2001 and other measures to address overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 19, 2000.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, ''Comments—2001 Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to Patricia A. Kurkul at the same address.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html.*

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SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP at 50 CFR part 648, subparts A, G, H, and I outline the process for specifying annually the catch limits for the summer flounder, scup and black sea bass commercial and recreational fisheries, as well as other management measures (*e.g.*, mesh requirements, minimum fish sizes, seasons, and area restrictions) for these fisheries. These measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or an exploitation rate.

The FMP is a joint plan involving the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). A Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held August 14–17, 2000. In addition to recommending annual measures, the Council proposes modifying the current trip limit provisions in the FMP so that they are possession limits to enhance at-sea enforcement. For black sea bass and scup, the Council also approved a motion that the possession limit would be the maximum amount that could be landed in a 24-hour period (calendar day).

NMFS notes that the Council included a recommendation that 2 percent of the 2001 Total Allowable Landings (TAL) for summer flounder, scup and black sea bass be set aside for experimental fishing and data collection purposes. This deduction was to occur no later than December 31, 2000, if the Council and Commission approved a specific project or projects that would use the set-aside allocation. However, the Council does not expect to complete its work until February 2001 on the framework action that would have authorized the provision for the set-aside allocation. Although this proposed rule includes a statement indicating the amount of the 2-percent research set-aside, NMFS has not made the deduction in the allocations for 2001, because the legal authority for doing so will not be in place until that framework action is implemented.

Scup

Scup was most recently assessed at the 31st Northeast Regional Stock Assessment Review Committee (SARC 31) in June 2000, which determined that scup are overfished and that overfishing is occurring. SARC 31 concluded that the scup spawning stock biomass (SSB) is low. The 1998–2000 Northeast Fisheries Science Center (NEFSC) spring survey 3-year average SSB was 0.10 SSB kg/tow, which is less than 5 percent of the index that defines the stock as overfished (2.77 kg/tow; the maximum NEFSC spring survey 3-year average of SSB). Indices of recruitment have generally trended downward in recent years, except for a moderate 1994 year class, a moderate to strong 1999 year class, and a strong 1997 year class. Due to the 1997 and 1999 year classes, spawning stock abundance has been increasing since 1998. However, the overall stock has a highly truncated age structure (*i.e.*, there are fewer older fish than there would be in a healthy stock), which likely reflects prolonged high fishing mortality rates. SARC 31 also noted that F should be reduced substantially and immediately, and that a reduction in fishing mortality from discards would have the most impact on rebuilding the stock, especially considering the importance of allowing recent year classes and all future good recruitment to contribute to rebuilding of the stock size and age structure.

The FMP established a target exploitation rate for scup in 2001 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both TACs to establish TALs for both sectors (TAC − discards = TAL). The commercial TAL is then allocated with differing percentages to three quota periods—Winter I (January–April)—45.11 percent; Summer (May–

October)—30.95 percent; and Winter II (Nov–December)—15.94 percent.

The proposed scup specifications for fishing year 2001 are based on the exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because it did not comply with the Magnuson-Stevens Act. Although the exploitation rate portion of the overfishing definition (converted to an F) was conceptually sound, though somewhat risk-prone, NMFS determined that the combination of that exploitation rate and the general decline of the stock made the risk that the rebuilding plan would not achieve stock rebuilding goals in the long-term unacceptable. The proposed scup specifications for 2001 are based on the exploitation rate that was found to be conceptually sound. NMFS believes that the long-term risks that were associated with the disapproved rebuilding plan do not apply to the proposed specifications since they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using that exploitation rate is a more cautious approach to managing this resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that meets all Magnuson-Stevens Act requirements.

Recommended Scup Harvest Limits

In making its recommendation to the Council, the Scup Monitoring Committee reviewed the available data. Deterministic projections of the NEFSC spring survey SSB, based on year 2000 index values and mean recruitment from the 1993 to 2000 surveys, indicated that the 2001 spring survey SSB could increase to 0.24 kg/tow if the F on ages 0–4 scup was 1.0. Assuming an F of 1.0 for 1999, and an average SSB that is at least equal to the 2000 value of 0.17 kg/tow in 2001 (average of 0.11 for 1999, 0.15 for 2000, and the projected 0.24 for 2001), then the target scup exploitation rate of 33 percent could be achieved with a 2001 TAL of 5.0 million lb (2.27 million kg), which is the level recommended by the Scup Monitoring Committee. Then, using the same proportion of discards to landings as assumed for 2000 (57 percent), the Scup Monitoring Committee recommended a 2001 TAC of 7.85 million lb (3.56 million kg). Based on the sector allocation specified in the FMP (commercial—78 percent; recreational—22 percent), this results in a commercial TAC of 6.123 million lb (2.78 million kg) and a recreational TAC of 1.727 million lb (0.78 million kg). The Scup Monitoring Committee assumed that the proportion of commercial discards to catch would remain the same in 2001 as in 2000 (45.1 percent), and estimated commercial discards of 2.76 million lb (1.25 million kg), resulting in a commercial quota of 3.36-million lb (1.52 million kg). Similarly, assuming that the proportion of recreational discards to catch would remain the same as in 2000 (4.96 percent), then recreational discards would be 0.09 million lb (0.039 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

If a research quota set-aside of 2 percent were implemented for 2001 it would be deducted from the overall TAL, and the resulting commercial quota and recreational harvest limit would be 3.29 million lb (1.49 million kg) and 1.61 million lb (0.73 million kg), respectively.

The commercial allocation recommended by the Scup Monitoring Committee is shown, by period, in Table 1. These allocations are preliminary and would be subject to downward adjustment, as required by the FMP, for any landings in excess of quota allocation in 2000 that are found when final 2000 data are available (a quota overage). Since the data collection for all periods in 2000 has not yet been finalized, this table shows the allocations prior to any deductions for overages. As of October 7, 2000, the Winter I allocation has been exceeded by 259,991 lb (117,930 kg) and the Summer allocation has been exceeded by 570,326 lb (258,695 kg).

TABLE 1.—PERCENT ALLOCATION OF COMMERCIAL SCUP QUOTA BASED ON THE SCUP MONITORING COMMITTEE RECOMMENDATION

Period	Percent	TAC [1]	Discards [2]	Quota Allocation		Possession Lb	Limits Kg
				Lb	Kg [3]		
Winter I	45.11	2,762,085 (1,252,860)	1,246,840 (565,557)	1,515,245	687,303	[4] 10,000	4,536
Summer	38.95	2,384,908 (1,081,776)	1,076,577 (488,327)	1,308,331	593,449	*n/a	.....
Winter II	15.94	976,006 (442,709)	440,581 (199,844)	535,425	242,865	2,000	907
Total [5]	100.00	6,122,999 (2,777,346)	2,763,998 (1,253,728)	3,359,001	1,523,617	.....	.....

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Kilograms are as converted from pounds.
[4] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 75 percent of the seasonal allocation.
[5] Totals subject to rounding error.
*n/a—Not applicable.

At its August 2000 meeting, the Council reviewed the recommendations of the Scup Monitoring Committee and did not accept its TAL and TAC recommendations. Rather than relying upon a 2001 SSB estimate of 0.17 kg/tow, which is based upon a 3-year average, the Council instead selected an SSB estimate of 0.21 in 2001, using the rationale that this value is higher than the 0.15 SSB value estimated for 2000, but slightly less than the 0.24 projected for 2001. Then, assuming an F of 1.0 for 1999, and an SSB estimate of 0.21 kg/tow in 2001, the target scup exploitation

rate of 33 percent could be achieved if landings (TAL) do not exceed 6.22 million lb (2.82 million kg) in 2001. Using an assumption different from that used by the Scup Monitoring Committee—that the amount of scup (rather than the proportion) calculated to be discarded in 2001 would remain the same as that calculated for 2000 (equating to 2.15 million lb (0.97 million kg)), the Council recommended a 2001 TAC of 8.37 million lb (3.80 million kg). This would result in a commercial TAC (78 percent) of 6.53 million lb (2.96 million kg) and a recreational TAC (22 percent) of 1.84 million lb (0.83 million kg). Using the same value for scup discards as in 2000, the commercial discards would be 2.08 million lb (0.94 million kg), and the commercial quota would be 4.45 million lb (2.02 million kg). Similarly, recreational discards would be 0.07 million lb (0.03 million kg), and the recreational harvest limit would be 1.77 million lb (0.80 million kg).

If a research quota set-aside of 2 percent were implemented, it would be deducted from the total TAL and the resulting commercial quota and recreational harvest limit would be 4.35 million lb (1.97 million kg) and 1.74 million lb (0.79 million kg), respectively.

The Council's proposed commercial scup allocation is shown in Table 2. These allocations would be subject to the same downward adjustment for any overages as would the Scup Monitoring Committee allocation recommendations, as explained previously.

TABLE 2.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA BASED ON MID-ATLANTIC COUNCIL RECOMMENDATION

Period	Percent	TAC [1]	Discards [2]	Quota Allocation		Possession Lb	Limits Kg
				Lb	Kg [3]		
Winter I	45.11	2,945,502 (1,336,057)	940,543 (426,623)	2,004,959	909,434	[4] 10,000	4,536
Summer	38.95	2,543,280 (1,153,612)	812,108 (368,365)	1,731,172	785,246	*n/a	
Winter II	15.94	1,040,818 (472,107)	332,349 (150,751)	708,469	321,356	2,000	907
Total [5]	100.00	6,529,600 (2,961,776)	2,085,000 (945,739)	4,444,600	2,016,036		

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Kilograms are as converted from pounds.
[4] The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 75 percent of the seasonal allocation.
[5] Totals subject to rounding error.
*n/a—Not applicable.

The Council based its recommended 40-percent increase in the scup quota from 2000 to 2001 on assumptions that scup stock biomass would increase from the estimated 2000 level and that the absolute amount of scup discarded (2.15 million lb (0.97 million kg)) would remain the same in 2001, rather than be proportional to landings. NMFS is concerned about these assumptions. The resultant quota recommendation may be risky and inconsistent with the best available scientific information, which indicates that scup biomass is very low—less than 5 percent of the biomass level that defines the stock as overfished. The Scup Monitoring Committee used a more conservative assumption that scup biomass would be no greater in 2001 than in 2000 in developing its quota recommendation.

The Council also assumed that the amount of discards would remain the same in 2001 as in 2000. This assumption may be unrealistic. Historically, the discard rate in the scup fishery has increased with the appearance of large year classes or has, at least, remained proportional to landings. Using the Council's rationale, scup discards as a proportion of scup catch were assumed to decline. The Scup Monitoring Committee assumed a constant proportion of discards to catch, as assumed in 2000, to establish its 2001 commercial quota and recreational harvest limit recommendations.

Also, although both the Council and Scup Monitoring Committee assumed an F of 1.0 in their quota recommendations, SARC 31 noted that F is at least 1.0 and possibly greater. More recent analysis by the NEFSC indicates that F is greater than 1.0, and could be as high as 1.95 for the 1998 year class. This may indicate the need for a more conservative quota recommendation. For these reasons, NMFS is seeking public comment on both the Monitoring Committee's and the Council's 2001 scup quota recommendations.

To enhance at-sea enforcement, the Council recommended changing the current scup trip limits to possession limits with the additional provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day). To achieve the recommended commercial quotas, the Council recommended, and these specifications propose, a Winter I (January–April) possession limit of 10,000 lb (4,536 kg) with a reduction to 1,000 lb (454 kg) for the remainder of that period when 75 percent of the quota allocation is projected to have been harvested. The Council also recommended, and these specifications propose, decreasing the Winter II period (November–December) possession limit from 4,000 lb (1,814 kg) to 2,000 lb (907 kg). The Council also recommended increasing the thresholds that specify the amount of scup that may be retained on board a vessel that is using mesh smaller than 4.5 inches (11 cm). In order for a vessel to possess scup in excess of the threshold, mesh smaller than 4.5 inches (11 cm) must be stowed and unavailable for use. The Council recommended increasing the threshold amount from 200 lb (91 kg) to 500 lb (227 kg) for the period November 1–April 30. The threshold would remain at 100 lb (45 kg) for the period May 1–October 31. The Council's recommendation to increase the threshold for the November–April period is intended to enable vessels to fish with smaller mesh for a longer period of time, but could potentially increase bycatch and subsequent discard of undersized scup. If discards are converted to landings due to the change in the mesh threshold, without additional discards occurring when the 500-lb (227 kg) threshold is reached, as the Council and industry believe would

occur, then the proposed change could be acceptable. Therefore, NMFS is specifically seeking public comments on the recommendation to increase the November–April threshold level from 200 lb (91 kg) to 500 lb (227 kg).

Gear Restricted Areas (GRAs)

As noted previously, SARC 31 emphasized the need to reduce fishing mortality from scup discards. The Scup Monitoring Committee took heed of this advice, particularly considering the importance of the 1999 year class to future recruitment. Therefore, the Scup Monitoring Committee recommended that the Council maintain GRAs. The GRAs seasonally close areas to specified small-mesh fisheries using trawl gear with codend mesh sizes less than 4.5 inches (11 cm), to reduce discards of scup.

GRAs were originally established by the Council in the 2000 specifications for the scup fishery to reduce scup bycatch in small-mesh fisheries (65 FR 33486, May 24, 2000). The GRAs established in the 2000 specifications became effective November 1, 2000. There are two GRAs: the Northern GRA (November–December), and the Southern GRA (January–April). The Scup Monitoring Committee reviewed a proposal to modify the existing GRAs that was developed by the Council staff. The Council staff analysis indicated that the modification would decrease scup discards by 61 percent (as opposed to 71 percent under the existing GRAs), yet decrease revenues by only $7.2 million (as opposed to $13.7 million under the existing GRAs). The Committee recommended to the Council that the existing GRAs be modified consistent with the staff analysis. The Council adopted this recommendation and requested NMFS to make the modification effective November 1, 2000. NMFS has published a proposed rule (65 FR 65818, November 2, 2000) that proposes to: (1) Modify the GRAs as recommended by the Council; (2) exempt the Atlantic mackerel small-mesh fishery from the GRA restrictions; (3) exempt the *Loligo* squid small-mesh fishery from the GRA restriction from November 1–December 31, 2000; and (4) modify the procedure and criteria for exempting small-mesh fisheries from the requirements of the GRAs. Further information concerning the modification of the GRAs may be found in the preamble to the proposed rule and is not repeated here. Subsequent text of this proposed rule refers to these modified GRAs as the GRAs recommended by the Council.

Scup Management Options

While SAW 31 concluded that a reduction in fishing mortality from discards would provide the most benefit to rebuilding the scup stock, the issue is complicated by a lack of sufficient sea sampling (observer) data to characterize the sources of the discards. Although NMFS does not have a precise estimate of scup discards, it is known that discards contribute to the mortality of small scup, and that levels of scup discards may have approached or exceeded scup landings in recent years. Given the relatively small amount of observer data, it has been difficult to determine exactly when, where, and in what fisheries the discards have occurred, and what the magnitudes of the scup discards are. In addition, because scup are migratory and fishing operations are mobile, it is difficult to define GRAs that will be equally effective over time (*i.e.,* fishing effort may change over time). All of the uncertainties have made it difficult to devise GRAs that are expected to reduce scup bycatch and discards sufficiently without also significantly impacting small-mesh fisheries.

While NMFS has proposed to modify the GRAs as recommended by the Council, NMFS also recognizes that GRAs are not the only way to address scup discard mortality. Therefore, through this proposed rule, NMFS is seeking comments on four possible options to meet the regulatory requirement at 50 CFR 648.120 that the Regional Administrator implement measures to ensure that the target exploitation rate will not be exceeded. The four options vary in terms of the TAC quota recommendation they incorporate, the discard deduction made to calculate TALs, the size and location of the GRAs, and the fisheries to be exempted from the GRAs. In general, if GRAs are used to reduce scup bycatch, the discard deduction made in establishing TAL is lower than it would be without GRAs, and the resultant quotas are higher. In other words, while scup need to be rebuilt, there are several ways to go about achieving that, but all involve reducing fishing mortality on scup.

The four options for scup management in 2001 on which NMFS is seeking comments are:

Option I—(This option is reflected in the regulatory text of this proposed rule as the recommendation of the Council and does not necessarily reflect NMFS' preferred alternative.) This option includes: (1) The Council's proposed quota for scup (a TAC of 8.37 million lb (3.80 million kg), a discard deduction of 2.15 million lb (0.97 million kg), and a TAL of 6.22 million lb (2.82 million kg)); (2) the GRAs recommended by the Council; and (3) exemptions for Atlantic herring, Atlantic mackerel and *Loligo* squid small-mesh fisheries.

Under this option, the commercial TAC would be 6.53 million lb (2.96 million kg) minus discards of 2.08 million lb (0.94 million kg), resulting in a commercial quota of 4.45 million lb (2.02 million kg). The recreational TAC would be 1.84 million lb (0.83 million kg) minus discards of 0.07 million lb (0.03 million kg), resulting in a recreational harvest limit of 1.77 million lb (0.80 million kg).

Option II—This option includes: (1) The Scup Monitoring Committee's quota recommendation for 2001 (a TAC of 7.85 million lb (3.56 million kg), a discard deduction of 2.85 million lb (1.29 million kg), and a TAL of 5.0 million lb (2.27 million kg)); (2) GRAs as recommended by the Council; and (3) exemptions for the Atlantic herring and Atlantic mackerel small-mesh fisheries.

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 2.76 million lb (1.25 million kg), resulting in a commercial quota of 3.36 million lb (1.52 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

Option III—This option includes: (1) The temporary suspension of GRA restrictions for 2001; and (2) a TAL established at a level that is consistent with the SARC conclusion that commercial discards are approximately equal to commercial landings (a TAC of 7.85 million lb (3.56 million kg), a discard deduction of 3.15 million lb (1.43 million kg), and a TAL of 4.70 million lb (2.13 million kg).

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 3.06 million lb (1.39 million kg), resulting in a commercial quota of 3.06 million lb (1.39 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

Option IV—This option includes: (1) Modified GRAs that are shorter in duration and that exclude the Hudson Canyon area, but incorporate other areas of high scup concentration and small-mesh fishing activities; (2) the Monitoring Committee's quota recommendation for 2001 (a TAC of 7.85 million lb (3.56 million kg), a

discard deduction of 2.85 million lb (1.29 million kg), and a TAL of 5.0 million lb (2.27 million kg)); and (3) exemptions for the Atlantic herring and Atlantic mackerel small-mesh fisheries.

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 2.76 million lb (1.25 million kg), resulting in a commercial quota of 3.36 million lb (1.52 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

The more southerly GRA under this option encompasses a large portion of the scup stock during the winter months, and would impact a substantial amount of coincident fishing effort directed at *Loligo* squid, according to vessel logbook reports. Therefore, the GRA would be expected to reduce scup discards in the winter, although a quantitative estimate of the reduction is not possible. The coordinates and time period of the modified GRAs for this option would be:

NORTHERN GEAR RESTRICTED AREA I (NOVEMBER 1–DECEMBER 31)

Point	N. lat.	W. long.
NGA 1	41° 00′	71° 00′
NGA 2	41° 00′	71° 30′
NGA 3	40° 00′	72° 40′
NGA 4	40° 00′	72° 05′
NGA 1	41° 00′	71° 00′

SOUTHERN GEAR RESTRICTED AREA (JANUARY 1–MARCH 15)

Point	N. lat.	W. long.
SGA 1	39° 20′	72° 50′
SGA 2	39° 20′	72° 25′
SGA 3	38° 00′	73° 55′
SGA 4	37° 00′	74° 40′
SGA 5	36° 30′	74° 40′
SGA 6	36° 30′	75° 00′
SGA 7	37° 00′	75° 00′
SGA 8	38° 00′	74° 20′
SGA 1	39° 20′	72° 50′

The four options for managing scup are significantly different from one another. While Option I may alleviate much of the negative economic impacts, NMFS is concerned that a 40-percent scup quota increase in combination with an exemption for the *Loligo* squid small-mesh fishery from the GRAs could result in an unacceptably high level of fishing mortality. Option II would incorporate the Scup Monitoring Committee's quota recommendation and the GRAs recommended by the Council, without exempting the *Loligo* squid small-mesh fishery. The Scup Monitoring Committee's quota recommendations appear to be more risk-averse than the Council's recommendation, with regard to discard assumptions and stock biomass. However, Option II would have greater negative economic impacts on small-mesh fisheries than would Option I. Suspending the GRAs for 2001 and reducing the scup quota to reflect more accurately scup discards, as in Option III, could reduce negative economic impacts on small-mesh fisheries, but would likely impose greater impacts on vessels that are more dependent on scup than would Options I or II. Option IV, which would further modify the GRAs, would allow small-mesh fishing in the Hudson Canyon area, but would restrict small-mesh fishing in areas farther south, albeit for a shorter duration than under the existing GRAs or the Council's proposed GRAs. A more detailed discussion of the analysis of these options is found in the Classification section of this proposed rule.

When it was discussing the annual specifications, the Council noted its interest in obtaining more information about scup discard through experimental fisheries. NMFS notes that it has received one application for an experimental fishing permit (EFP) to conduct gear research in the small-mesh fisheries of the Mid-Atlantic region, particularly with regard to mesh selectivity in retaining scup. In order to issue an EFP, NMFS must publish a notification in the **Federal Register** to allow the public to comment. This notification should be published in the near future.

Summer Flounder

In order to comply with a Court Order issued by the U.S. Court of Appeals for the District of Columbia on April 25, 2000, NMFS implemented an emergency interim rule on August 2, 2000 (65 FR 47648), temporarily amending the FMP and its implementing regulations that establish the target to be achieved by the 2001 TAL for summer flounder. The emergency rule established a biomass target for 2001, rather than the F target specified in the FMP, and requires that the 2001 total quota be set at a level that will achieve, with at least a 50-percent probability, the biomass level that would have been achieved at the end of 2001 if the F target had been met in 1999 and 2000, and would be met in 2001.

As indicated in the emergency interim regulations, the most recent stock assessment specified a biomass target of 148.8 million lb (67.5 million kg) for December 31, 2001. The biomass target was calculated using the results of the summer flounder stock assessment completed by SARC 31 in June 2000. Although the F of 0.32 estimated for 1999 represents a significant decline from the F of 1.31 estimated for 1994, the assessment indicates that the stock is still overfished and overfishing is still occurring, relative to the FMP overfishing definitions. Spawning stock biomass (SSB) has increased steadily each year since 1989 to a current 64.8 million lb (29.4 million kg), the highest value in the time series. However, total stock biomass, which is the basis for the overfishing definition, has been stable since 1994. Projections based on assumptions about future landings, discards, and recruitment to the stock, indicate that if the 2000 TAL is not exceeded, total stock biomass will exceed the minimum biomass threshold in January 2001. Because of these assumptions, however, the forecast of stock biomass for January 2001 has a wide confidence interval. When the total stock biomass is above the stock's minimum biomass threshold, the stock will no longer be considered overfished, though it will remain below the level necessary to produce maximum sustainable yield (B_{msy}). Because the Magnuson-Stevens Act requires that stocks be managed to produce MSY, additional rebuilding of the stock still needs to be accomplished.

The SARC 31 assessment estimated the 1999 year class to be the smallest since 1988, at 19 million fish. However, the Council noted that the Virtual Population Analysis (VPA) tends to underestimate the size of recent year-classes. Year-class estimates for 1996, 1997 and 1998, based on the VPA, ranged from 32 to 38 million fish, which is about average.

The Summer Flounder Monitoring Committee reviewed the stock status and projections to meet the biomass target based on these data and recommended a 17.91-million lb (8.125 million kg) TAL for 2001, which would be divided into a commercial quota of 10.75 million lb (4.877 million kg) and a recreational harvest limit of 7.16 million lb (3.248 million kg). The Council adopted these recommendations, and NMFS proposes to implement them because they are consistent with the emergency interim rule. Based on the current status of the stock and the catches estimated for 1999 and 2000, this level has a 50-percent probability of achieving the 2001 biomass target of 148.8 million lb (6,751 mt).

Although the Council and the Board met jointly, the Board declined to make a TAL recommendation for summer flounder in August 2000. The Board is scheduled to make its TAL recommendation at a meeting on November 29, 2000.

Currently, the Commission has voluntary measures in place to decrease discards of sublegal fish in the commercial fishery, as well as to reduce regulatory discards occurring as a result of landing limits in the states. The Commission established a system whereby 15 percent of each state's quota could be voluntarily set aside each year for vessels to land an incidental catch allowance (implemented as trip limits) after the directed fishery has been closed. The intent of the voluntary incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded.

The FMP requires that landings of summer flounder in excess of a state's commercial quota allocation in one year be deducted from that state's allocation for the following year. The emergency interim rule established a provision for the specification of quotas in 2001 whereby any under-harvest of an individual state's summer flounder commercial quota in 2000 would be applied to the final 2001 specifications for that state. This temporary measure was enacted because NMFS expected that some states might have been prompted by the Court Order to reduce commercial harvests prior to the implementation of the emergency measures. Therefore, the measure was established to avoid penalizing states for their precautionary action.

The proposed commercial quotas, by state, for 2001 are presented in Table 3. These quotas are preliminary and subject to downward or upward adjustments if there are overages or underages in a state's 2000 harvest. As of October 13, 2000, the only known overages are 2,033 lb (922 kg) in Maine and 14,142 lb (6,415 kg) in New Jersey. These and additional adjustments will be necessary as 2000 landings data are finalized. NMFS will publish such adjustments in the **Federal Register**.

TABLE 3.—2001 SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Directed		15 Percent as incidental catch		Total	
		lb	kg[1]	lb	kg[1]	lb	kg[1]
ME	0.04756	4,345	1,971	767	348	5,112	2,319
NH	0.00046	42	19	7	3	49	22
MA	6.82046	623,076	282,625	109,955	49,875	733,031	332,501
RI	15.68298	1,432,704	649,870	252,830	114,683	1,685,534	764,553
CT	2.25708	206,193	93,529	36,387	16,505	242,580	110,034
NY	7.64699	698,583	316,875	123,280	55,919	821,863	372,795
NJ	16.72499	1,527,896	693,049	269,628	122,302	1,797,524	815,352
DE	0.01779	1,625	737	287	130	1,912	867
MD	2.03910	186,280	84,496	32,873	14,911	219,153	99,407
VA	21.31676	1,947,372	883,322	343,654	155,880	2,291,026	1,039,203
NC	27.44584	2,507,289	1,137,299	442,462	200,699	2,949,751	1,337,998
Total	100.00	9,135,405	4,143,793	1,612,130	731,257	10,747,535	4,875,050

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

If a 2-percent research quota set-aside were implemented for the 2001 fishery, the total commercial quota would be 10,532,584 lb (4,777,500 kg).

Black Sea Bass

Black sea bass was last assessed by the 27th Northeast Regional Stock Assessment Review Committee (SARC 27), with results published December 1998. SARC 27 indicated that black sea bass are over-exploited and at a low biomass level. However, relative exploitation rates, based on the total commercial and recreational landings and the moving average of the log-transformed spring survey index (an index based on scientific sampling of the distribution and relative abundance), indicate a significant reduction in mortality in 1998 and 1999 relative to 1996 and 1997 levels. Relative exploitation rates in 1999 were nearly identical to those estimated for 1998.

Results of the spring trawl surveys conducted by the NEFSC indicate that stock size of black sea bass has increased in recent years. The 3-year moving average for 1998–2000 is 42 percent higher than the value for 1997–1999. In addition, the recruitment index for 2000 (1.135) is the highest in the time series 1968–2000.

The FMP specifies a target exploitation rate of 37 percent for 2001. Although the exploitation rate for 2000 is uncertain, relative exploitation indices have declined in recent years. Based on length frequencies from the spring survey, and assuming length at full recruitment of 25 cm, the average F was 0.75 (48-percent exploitation rate) in 1998. If the 2001 biomass is at least equal to the 2000 value, and assuming an exploitation rate of 48 percent in 1998, the TAL could remain the same and the exploitation rate would be expected to drop to 35 percent, which is close to the 2001 target of 37 percent specified in the FMP.

The Black Sea Bass Monitoring Committee (BSB Monitoring Committee) reviewed this information and recommended that the 2001 TAL remain the same as in 2000—6.173 million lb (2.80 million kg). Based on this TAL, the commercial quota would be 3.025 million lb (1.37 million kg) and the recreational harvest limit would be 3.148 million lb (1.43 million kg). The BSB Monitoring Committee also recommended that the minimum fish size, mesh size, and pot or trap gear vent size remain unchanged, and that the threshold triggering the minimum mesh-size requirement be reduced from 1,000 lb (454 kg) to 200 lb (91 kg). The BSB Monitoring Committee recommended the threshold reduction to discourage small-mesh directed fishing for black sea bass. In addition, the BSB Monitoring Committee recommended that the possession limits be reduced to 1,500 lb (680 kg) in Quarters 2 and 4, and to 1,000 lb (454 kg) in Quarter 3. The Quarter 1 possession limit would remain at 9,000 lb (4,082 kg). The BSB Monitoring Committee believed that

these possession limits would provide the best chance of allowing the quotas to be harvested, while allowing the fishery to remain open for the entire quarter, thus providing extended fishing opportunities.

At their August 2000 meeting, the Council and Board voted to adopt the BSB Monitoring Committee's recommendations for the black sea bass TAL and reductions in the possession limits for Quarters 2 and 3. The Council also voted to set the possession limit for Quarter 4 at 2,000 lb (907 kg), rather than at 1,500 lb (680 kg) as recommended by the BSB Monitoring Committee. Possession limit reductions were recommended to prevent quota overages in each quarter. In addition, the Council recommended changing the current trip limits for black sea bass to possession limits to enhance at-sea enforcement, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day). The Council and Board recommended maintaining other measures at status quo, including minimum mesh size, minimum fish size, and sea bass pot vent size. The Council and Board did not accept the BSB Monitoring Committee's recommendation to drop the level of catch triggering the requirement to use the minimum mesh of 4.0 inches (10.2 cm) from 1,000 lb (454 kg) to 200 lb (91 kg).

The proposed commercial quota and corresponding possession limits are shown in Table 4. These allocations are preliminary and would be subject to a downward adjustment for any overages in a period's harvest in 2000, as provided in the FMP. Since the data collection for all periods in 2000 has not yet been finalized, this table shows the allocations prior to any deductions. As of October 7, 2000, the Quarter 2 commercial quota has been exceeded by 229,075 lb (103,907 kg) and the Quarter 3 commercial quota has been exceeded by 64,101 lb (29,076 kg). Additional adjustments will be necessary as 2000 landings data are finalized.

TABLE 4.—2001 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY POSSESSION LIMITS

Quarter	Percent	Lb	Kg	Possession limits	
				Lb	Kg
1 (Jan-Mar)	38.64	1,168,760	530,141	9000	4,082
2 (Apr-Jun)	29.26	885,040	401,447	1500	680
3 (Jul-Sep)	12.33	372,951	169,168	1000	454
4 (Oct-Dec)	19.77	597,991	271,244	2000	907
Total	100.00	3,024,742	1,372,000	.....	.....

If a research quota set-aside of 2 percent were implemented for the 2001 fishery, the resulting commercial quota and recreational harvest limit would be 2,959,600 lb (1,342,452 kg) and 3,087,000 lb (1,400,239 kg), respectively.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council and NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**) or via the Internet at http:/www.nero.nmfs.gov/ro/doc/nero.html. A summary of the analysis follows.

NMFS prepared an Integrated Analysis of Alternatives for the EA/RIR/IRFA (NMFS' analysis) as a supplemental analysis to the IRFA to examine the overall economic impacts of the four options that are being considered for scup management, in combination with the proposed measures for summer flounder and black sea bass. Specifically, NMFS' comprehensive analysis incorporated the effects of the proposed GRAs, the proposed scup quotas, the preferred scup trip limits, the preferred summer flounder and black sea bass quotas and trip limits, and any known 2000 overages that would impact 2001 quotas. NMFS' analysis was similar to that of the Council, but there are several substantive differences. First, the Council's analysis evaluated the recommended quota specifications and GRA impacts separately, using different data sets and different methods; NMFS analyzed the combined effects of the GRAs and the quota specifications for all three species. Second, the Council did not incorporate the economic effects of the trip limit changes for scup and black sea bass; NMFS did. Third, the Council's analysis did not reflect the fact that no non-exempt small-mesh species may be retained within the GRAs; NMFS' analysis does reflect this. Finally, the Council's analysis of the GRAs was based on combinations of dealer and sea sampling (observer) data, whereas NMFS used calendar year 1999 logbook and dealer data to analyze the economic impacts of the quota specifications, GRAs, and trip limit changes in a single model. NMFS believes that this approach incorporates a more thorough assessment of the combined effects of the proposed management measures for 2001. The four scup management options were evaluated and compared against the 2000 measures, which was considered the status quo alternative.

The economic effects of the four scup options were analyzed using two different proration methods to provide a range of impacts. In the first method (quota baseline), 1999 fishing year data were prorated by the percent change in the proposed 2001 adjusted quotas and then compared to the adjusted 2000 quotas. This proration scheme reflects changes in fishing opportunity from one year to the next, without biasing the impacts due to a large overage that may have occurred in the baseline year. Nevertheless, a large overage in a given year does represent a potential loss of income to participating vessels in the subsequent year. Therefore, a second proration scheme was developed. Under the second method (landings baseline), the adjusted 2001 quota was compared to actual 2000 landings wherever available, and to 1999 landings otherwise. Using both proration schemes provides a range to estimate economic impacts for the status quo and all other alternatives considered. The alternatives and results of the analyses are summarized below.

The use of 2000 measures as status quo provides the baseline against which the proposed options are compared. The status quo was defined as being equivalent to a continuation of measures that were in effect for fishing year 2000 into 2001, except that the summer flounder TAL was adjusted to 17.91 million lb (8.12 million kg), which is the level necessary to meet the requirements of the Court Order. The GRAs analyzed as status quo are the GRAs recommended by the Council, except that Atlantic herring was the only exempted fishery. The fishing year 2000 trip limits for black sea bass and scup were assumed to be carried forward to 2001. Affected trips for the analysis of GRA impacts were those fishing trips that used less than 4.5-inch (11.43 cm) mesh during the proposed time and areas of the GRAs. Exempted trips were composed of trips in the area encompassed by the GRA that landed herring. Consistent with the exemption regulations that were implemented for fishing year 2000, landings of any non-exempt small-mesh species other than herring (Atlantic mackerel, *Loligo* squid, whiting, black sea bass) were deducted from total landings on exempted trips.

While the scup options have been described earlier in this preamble, the analyses made other assumptions as well. Based on 1999 logbook data, under Option I, aggregate scup landings would be expected to exceed 75 percent of the resulting Winter I scup quota, so a 10,000-lb (4,536-kg) trip limit was assumed to prevail for the entire Winter I period. For Options II, III, and IV, the lower overall 2001 TAL for scup means that 75 percent of the Winter I scup quota would likely be reached by the end of February, based on 1999 logbook data, so a 1,000-lb (454-kg) trip limit for scup was applied for March and April of the Winter I period under these three options.

NMFS' analysis found that the proposed management measures potentially impact a total of 1,158 vessels that participated in at least one of the summer flounder, scup and black sea bass fisheries, or had fished with mobile gear with less than 4.5-inch (11.43 cm) mesh inside at least one of the proposed GRAs.

Using the landings baseline proration method, Options I and III are expected to yield total gross revenues higher than would the status quo measures by approximately $0.91 million and $0.40 million, respectively, whereas Options II and IV yielded total gross revenues lower than the status quo by approximately $0.16 million and $0.13 million, respectively.

As part of the IRFA supplement, NMFS' analysis examined the four options relative to the status quo (2000 measures, as described earlier) to determine the percentage of the 1,158 potentially affected vessels that would experience a revenue loss of 5 percent or greater. A summary is provided here.

PERCENT OF VESSELS EXPERIENCING REVENUE LOSS > 5%

	Landings baseline	Quota baseline
Option I	2.1	3.4
Option II	3.2	4.6
Option III	2.8	4.1
Option IV	2.9	4.7

The Council's IRFA analysis examined the cumulative impacts of four alternative levels of commercial harvest limits (see Table 5). Alternative 1 analyzed the cumulative impacts of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass on vessels that are permitted to catch any of these three species. Alternative 2 analyzed the cumulative impacts if the harvest limits remained the same as 2000 (status quo). Alternative 3 analyzed the cumulative impacts of the least restrictive possible harvest levels—those that would result in the least reductions (or greatest increases) in landings (relative to 1999) for all species. Alternative 3 resulted in the highest possible landings for 2001, regardless of their probability of achieving the biological targets. Alternative 4 analyzed the cumulative impacts of the most restrictive possible harvest levels—those that would result in the greatest reductions in landings (relative to 1999) for all species.

TABLE 5.—COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

	Commercial quota	Quota specification as a proportion of the 2000 quotas	Percent change
Quota Alternative 1 (Council Alternative):			
FLK Preferred Alternative	10,747,535	0.967	−3.27
Scup Preferred Alternative	4,444,600	1.754	75.38
Black Sea Bass Preferred Alternative	3,024,742	1	0
Quota Alternative 2 (Status Quo):			
FLK Status Quo	11,111,298	1	0
Scup Status Quo	2,534,160	1	0
Black Sea Bass Status Quo	3,024,742	1	0
Quota Alternative 3 (Least Restrictive):			
FLK Non-Selected Alternative 3	12,276,662	1.105	10.49
Scup Non-Selected Alternative 3	5,138,800	2.028	102.78
Black Sea Bass Non-Selected Alternative 3	3,875,900	1.281	28.14
Quota Alternative 4 (Most Restrictive):			
FLK Non-Selected Alternative 4	9,940,643	0.895	−10.54
Scup Non-Selected Alternative 4	3,496,120	1.380	37.96
Black Sea Bass Non-Selected Alternative 4	1,999,200	0.661	−33.91

"FLK" is summer flounder

The categories of small entities likely to be affected by this action include commercial vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as vessels that fish for any of these species in state waters. The Council estimates that the proposed 2001 quotas could affect 1,969 vessels with a Federal summer flounder, scup, and/or black sea bass permit. Of these, 1,087 vessels are actively participating (i.e., landed catch in 1999) in these fisheries. Note that this number is lower than the number estimated to be impacted in the NMFS analysis. This is because the NMFS analysis also includes vessels

that used fishing mesh less than 4.5 inches (11.43 cm) within the GRAs.

The Council's analysis of the harvest limits in Alternative 1 indicates that these harvest levels would result in greater than a 5-percent revenue loss to eight of the 1,087 commercial vessels expected to be impacted by this rule. Six of the vessels with projected revenue losses of 5 percent or greater landed black sea bass only, one vessel landed scup and black sea bass, and the other vessel landed black sea bass and summer flounder. Six vessels would experience no change in revenue. Five hundred and forty-four vessels would experience revenue losses of less than 5 percent, and 529 vessels would experience an increase in revenue under the Council's proposed harvest limits.

The analysis of Alternative 2 (status quo) indicated that these harvest limits would result in a revenue loss of 5 percent or greater to 15 of the 1,087 commercial vessels expected to be impacted by this rule. Six of the vessels with projected revenue losses of 5 percent or greater landed black sea bass only, five vessels landed scup and black sea bass, one vessel landed black sea bass and summer flounder, two vessels landed summer flounder scup and black sea bass, and one vessel landed scup only. No change in revenue would be experienced under the Alternative 2 by 6 vessels, while 95 vessels would have revenue losses less than 5 percent. 971 vessels would experience an increase in revenue.

The analysis of the least restrictive harvest limits (Alternative 3) indicated that none of the 1,087 vessels expected to be impacted by this rule would experience revenue losses of 5 percent or greater. All but one of the vessels would experience an increase in revenue. The vessel projected to experience a revenue loss of less than 5 percent possessed a summer flounder permit.

The analysis of the most restrictive harvest limits (Alternative 4) indicated that revenue reductions of 5 percent or more would be experienced by 214 out of the 1,087 commercial vessels expected to be impacted by this rule. Eighty-six of the vessels with projected revenue losses of 5 percent or greater landed black sea bass only; 39 vessels landed summer flounder, scup and black sea bass; 38 vessels landed black sea bass and summer flounder; 25 vessels landed summer flounder only; 22 vessels landed scup and black sea bass; and 4 vessels landed summer flounder and scup. Six hundred and eighty-nine vessels would have a revenue loss less than 5 percent, and 184 vessels would experience an increase in revenue.

The Council also prepared an analysis of the alternative recreational harvest limits. For the summer flounder recreational fishery, the preferred harvest limit of 7.165 million lb (3.25 million kg) in 2001 (Alternative 1) is only slightly less than the harvest limit for 1997, 1998, 1999, and 2000, and about 1.201 million lb (0.54 million kg) below the recreational landings for 1999. Alternative 2's recreational harvest limit of 7.41 million lb (3.36 million kg) in 2001 would be the same harvest level that was implemented each year beginning in 1997. However, it could result in a decrease in recreational landings of about 1 million lb (0.45 million kg) from estimated recreational landings for 1999. Alternative 4's recreational harvest limit of 6.63 million lb (3.0 million kg) in 2001 would be 0.78 million lb (0.35 million kg) below the recreational harvest limit for 2000 and 0.96 million lb (0.44 million kg) below the 1999 recreational landings. If Alternative 1, 2, or 4 were chosen, it is likely that more restrictive management measures would be required to prevent anglers from exceeding the recreational harvest limit in 2001. The effect of greater restrictions is unknown at this time. More limiting regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. Alternative 3 would allocate 8.184 million lb (3.71 million kg) to the summer flounder recreational fishery and would increase short-term economic benefits due to increased landings.

For the scup recreational fishery, Alternative 1's recreational harvest limit of 1.77 million lb (0.80 million kg) is nearly identical to 1999 landings and, therefore, should have minimal impacts. Alternative 2's limit of 1.238 million lb (0.56 million kg) could result in a decrease in recreational landings of about 0.65 million lb (0.29 million kg) from estimated recreational landings for 1999. Alternative 4's recreational harvest limit of 1.504 million lb (0.68 million kg) ould be a 20-percent decrease from the 1999 recreational landings, but 0.3 million lb (0.14 million kg) more than the recreational harvest limit implemented for 2000. With Alternative 2 or 4, it is likely that more restrictive management measures would be required to prevent anglers from exceeding the recreational harvest limit in 2001. The effect of greater restrictions on party/charter boats is unknown at this time. Alternative 3 would increase the recreational harvest limit by 4 percent compared to 1999 recreational landings, or to 1.967 million lb (0.89 million kg), and therefore is not expected to result in negative economic impacts.

For the black sea bass recreational fishery, harvest limits under Alternative 1 and 2 (3.14 million lb (1.42 million kg)) are about 85 percent above the 1999 recreational landings. As such they are not expected to result in negative economic impacts on the recreational fishery. Under Alternative 3 and 4 recreational landings would be increased by more than 2 million lb (0.90 million kg) and 0.38 million lb (0.17 million kg), respectively, over the 1999 landings estimate; therefore these alternatives are not expected to cause negative economic impacts.

The Council analysis used 1998 Vessel Trip Report (VTR) data to estimate that a maximum of 172 vessels would be affected by the GRAs. The Council's analysis identified affected vessels as those that fished with trawl gear with codend mesh less than 4.5 inches (11.4 cm) in the largest of the GRAs evaluated in the 2000 specifications. These GRAs incorporated full statistical areas, while the GRAs that were implemented and that are analyzed here are smaller. Therefore, the Council concluded that 172 vessels would represent the maximum number of affected entities; the actual number would likely be smaller but could not be quantified.

The Council noted that the economic impacts of the GRA alternatives may be overestimated because the GRAs do not prohibit all trawling activity, but may rather redirect it to other open areas. The amount of redirection could not be quantified. The economic impacts of a reduction in landings from inside the GRAs are likely to be mitigated by an increase in landings from outside the GRAs, though vessel costs could increase if being displaced from the GRAs increases trip length or decreases catch per unit effort.

The Council analysis concludes that the proposed mesh threshold increase from 200 lb to 500 lb (91 kg to 227 kg) for the November–April period is expected to have a positive impact on harvesters using small mesh, since more scup will be able to be retained in the small mesh fishery than under the status quo.

The 75-percent landing trigger proposed for the scup Winter I period would decrease the landing limit from 10,000 lb (4,536 kg) to 1,000 lb (453 kg) per trip. An 85-percent trigger was used in 2000. The 75-percent trigger is expected to decrease landings early enough in the period so that the quota

will be distributed over more of the Winter I period. This measure is not expected to have a major negative effect on landings during the period, because it is not a major change from the 2000 measure.

The major impact associated with the proposed change in the scup possession limit in Winter II from 4,000 lb (1,814 kg) to 2,000 lb (907 kg) is a potential increase in the number of trips made by vessels during that period. The Council estimated that the proposed change in the possession limit for Winter II would increase the numbers of trips from 142 to 232. If harvesters are unable to make additional trips to compensate for the reduction in landings associated with the possession limit (142 trips was a limiting factor), then each of the estimated 49 vessels landing scup in this period would lose an estimated $3,692. This loss in revenue is likely to be overestimated, since vessels could make additional trips or fish longer on the same trips for other species to compensate for landings reductions associated with the proposed scup possession limit. This would have an unknown impact on scup mortaltiy.

The major impact associated with the proposed black sea bass possession limit changes in Quarter 2, from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) and Quarter 3, from 2,000 lb (907 kg) to 1,000 lb (454 kg) is a potential increase in the number of trips made by vessels during those periods. Based on 1999 dealer reports, the Council estimated that the proposed possession limits for Quarters 2 and 3 would increase the numbers of trips needed to land the same amount of black sea bass landed during those quarters in 1999 from 144 to 256, and from 102 to 177, respectively. If harvesters are unable to make additional trips to compensate for the reduction in landings associated with the possession limits (144 and 102 trips were limiting factors), each vessel would lose an estimated $7,802 and $7,065 during Quarters 2 and 3, respectively. These revenue losses are likely to be overestimated, since vessels could make additional trips or fish longer on the same trips for other species to compensate for landings reductions associated with the proposed landing limit. This would have an unknown impact on black sea bass mortality.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Northeast Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (a)(123) is removed; and paragraphs (a)(84), (a)(92), (a)(122) and (u)(9) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(84) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the amount specified in § 648.123 (500 lb (226.8 kg) or more from November 1–April 30, or 100 lb (45.4 kg) or more from May 1–October 31), unless the vessel meets the gear restrictions in § 648.123.

* * * * *

(92) Fish for, catch, possess, or retain 1,000 lb (453.4 kg) or more of black sea bass in or from the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, to the U.S.—Canadian border, unless the vessel meets the gear restrictions of § 648.144.

* * * * *

(122) Fish for, catch, possess, retain or land silver hake or black sea bass in or from the areas, and during the time periods, described in § 648.122(a), (b), or (c) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions, or that are modified, obstructed or constricted, as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

(u) * * *

(9) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at § 648.140.

* * * * *

3. In § 648.120, paragraph (b)(2) is revised to read as follows:

§ 648.120 Catch quotas and other restrictions.

* * * * *

(b) * * *

(2) Possession limits for the Winter I and Winter II periods. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24 hour period (calendar day).

* * * * *

4. In § 648.122, paragraphs (d) and (e) are redesignated as (e) and (f); paragraphs (a), (b), and (c) are revised, and a new paragraph (d) is added as follows:

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	39°00′	72°50′
SGA2	39°11′	72°58′
SGA3	38°00′	74°05′
SGA4	38°00′	73°57′
SGA1	39°00′	72°50′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass and silver hake (whiting).

(b) *Northern Gear Restricted Area I.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum

mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. Lat.	W. Long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area I that are fishing for, or in possession of, the following non-exempt species: Black sea bass and silver hake (whiting).

(c) *Northern Gear Restricted Area II.* (1) From December 1 through January 31, all trawl vessels in the Northern Gear Restricted Area II that fish for or possess non-exempt species as specified in paragraph (c)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area II is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA II

Point	N. Lat.	W. Long.
NGA6	40°00′	71°40′
NGA7	40°00′	72°10′
NGA8	39°00′	73°09′
NGA9	39°00′	72°50′
NGA6	40°00′	71°40′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (c)(1) of this section apply only to vessels in the Northern Gear Restricted Area II that are fishing for, or in possession of, the following non-exempt species: Black sea bass, Loligo squid, and silver hake (whiting).

(d) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a), (b), and (c) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a), (b), and (c) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

* * * * *

5. In § 648.123, paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

* * * * *

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the methods specified in § 648.23(b), and that can be shown not to have been in recent use is considered to be not available for immediate use.

* * * * *

6. In § 648.140, paragraph (b)(2) is revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

* * * * *

(b) * * *

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the quarterly quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

* * * * *

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3 CFR

Proclamations:
1694 (See Proc. 7373) 69221
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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.

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- Marine mammals and certain other regulated animals; perimeter fence requirements; technical amendment; published 11-28-00

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- California; published 11-28-00
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  - Manual roaming service; interconnection and resale obligations; correction; published 10-19-00
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''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. 782/P.L. 106–501

Older Americans Act Amendments of 2000 (Nov. 13, 2000; 114 Stat. 2226)

H.R. 1444/P.L. 106–502

Fisheries Restoration and Irrigation Mitigation Act of 2000 (Nov. 13, 2000; 114 Stat. 2294)

H.R. 1550/P.L. 106–503

To authorize appropriations for the United States Fire Administration, and for carrying out the Earthquake Hazards Reduction Act of 1977, for fiscal years 2001, 2002, and 2003, and for other purposes. (Nov. 13, 2000; 114 Stat. 2298)

H.R. 2462/P.L. 106–504

To amend the Organic Act of Guam, and for other purposes. (Nov. 13, 2000; 114 Stat. 2309)

H.R. 2498/P.L. 106–505

Public Health Improvement Act (Nov. 13, 2000; 114 Stat. 2314)

H.R. 3388/P.L. 106–506

Lake Tahoe Restoration Act (Nov. 13, 2000; 114 Stat. 2351)

H.R. 3621/P.L. 106–507

To provide for the posthumous promotion of William Clark of the Commonwealth of Virginia and the Commonwealth of Kentucky, co-leader of the Lewis and Clark Expedition, to the grade of captain in the Regular Army. (Nov. 13, 2000; 114 Stat. 2359)

H.R. 5239/P.L. 106–508

To provide for increased penalties for violations of the Export Administration Act of 1979, and for other purposes. (Nov. 13, 2000; 114 Stat. 2360)

S. 700/P.L. 106–509

Ala Kahakai National Historic Trail Act (Nov. 13, 2000; 114 Stat. 2361)

S. 938/P.L. 106–510

Hawaii Volcanoes National Park Adjustment Act of 2000 (Nov. 13, 2000; 114 Stat. 2363)

S. 964/P.L. 106–511

To provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes. (Nov. 13, 2000; 114 Stat. 2365)

S. 1474/P.L. 106–512

Palmetto Bend Conveyance Act (Nov. 13, 2000; 114 Stat. 2378)

S. 1482/P.L. 106–513

National Marine Sanctuaries Amendments Act of 2000 (Nov. 13, 2000; 114 Stat. 2381)

S. 1752/P.L. 106–514

Coastal Barrier Resources Reauthorization Act of 2000 (Nov. 13, 2000; 114 Stat. 2394)

S. 1865/P.L. 106–515

America's Law Enforcement and Mental Health Project (Nov. 13, 2000; 114 Stat. 2399)

S. 2345/P.L. 106–516

Harriet Tubman Special Resource Study Act (Nov. 13, 2000; 114 Stat. 2404)

S. 2413/P.L. 106–517

Bulletproof Vest Partnership Grant Act of 2000 (Nov. 13, 2000; 114 Stat. 2407)

S. 2915/P.L. 106–518

Federal Courts Improvement Act of 2000 (Nov. 13, 2000; 114 Stat. 2410)

H.R. 4986/P.L. 106–519

FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (Nov. 15, 2000; 114 Stat. 2423)

H.J. Res. 125/P.L. 106–520

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 15, 2000; 114 Stat. 2436)

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