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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–007–1]

Change in Disease Status of the Netherlands Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by removing The Netherlands from the list of countries free from hog cholera. We are taking this action based on reports we have received from The Netherlands that an outbreak of hog cholera has occurred in The Netherlands. As a result of this action, there will be additional restrictions on the importation of pork and pork products into the United States from The Netherlands, and the importation of swine from The Netherlands will be prohibited.

DATES: Interim rule effective February 21, 1997. Consideration will be given only to comments received on or before April 28, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–007–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–007–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from countries where hog cholera is known to exist. Section 94.10 of the regulations, with certain exceptions, prohibits the importation of swine which originate in or are shipped from or transit any country in which hog cholera is known to exist. Sections 94.9(a) and 94.10(a) of the regulations provide that hog cholera exists in all countries of the world except for certain countries listed in those sections.

Prior to the effective date of this interim rule, The Netherlands was included in the lists in §§ 94.9(a) and 94.10(a). The Netherlands has reported that an outbreak of hog cholera has occurred in that country. After reviewing the reports submitted by The Netherlands, APHIS has determined to remove The Netherlands from the list of countries free of hog cholera.

Therefore, we are amending §§ 94.9(a) and 94.10(a) by removing The Netherlands from the list of countries declared to be free of hog cholera. As a result of this action, the importation of swine from The Netherlands is prohibited, and pork and pork products from The Netherlands will not be eligible for entry into the United States unless the pork or pork products are cooked or cured and dried in accordance with the regulations.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of hog cholera into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The United States has been notified that an outbreak of hog cholera has occurred in The Netherlands. Hog cholera is a contagious viral disease of swine. The impact of an outbreak for U.S. swine producers would be economically damaging, as described in a recent APHIS study (''Costs of a Potential Hog Cholera Outbreak,'' C. Matthew Rendleman, May 9, 1994). In that study, a range of scenarios was set forth, from infection of herds in a single State to a nationwide outbreak. Potential costs to producers, consumers, and taxpayers were estimated to range from $34 million to $5.4 billion in 1992 dollars.

The Netherlands has only been recognized free of hog cholera since August 1996 (61 FR 40292–40293, Docket No. 96–014–2, which was published on August 2, 1996 and effective on August 19, 1996). Consequently, any effects of that rule change on pork imports from The Netherlands would have had little time to develop. Moreover, even with hog cholera free status, inspection and certification procedures were required to ensure that pork imports originating in The Netherlands were not commingled with pork from neighboring countries having swine vesicular disease.

In 1995, the year before The Netherlands was declared free of hog cholera, U.S. pork imports from The Netherlands were valued at $14.5 million (less than 2 percent of the total value of all U.S. pork imports that year). No live swine or fresh pork were imported from The Netherlands in 1995.

Removing The Netherlands from the list of countries free of hog cholera is not expected to significantly affect U.S. entities, large or small. The value of pork products imported by the United States from The Netherlands is expected to be much the same as it was before The Netherlands acquired hog cholera free status 6 months ago.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by removing the phrase ''The Netherlands,''.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by removing the phrase ''The Netherlands,''.

Done in Washington, DC, this 21st day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–4932 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97–12]

Restrictions on Advances to Non-Qualified Thrift Lenders

AGENCY: Federal Housing Finance Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is amending its regulations on advances to members that are not qualified thrift lenders to implement certain changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other things, the EGRPRA broadened the universe of assets that a savings association may use in meeting its qualified thrift lender (QTL) requirement. Non-savings association members are not directly subject to the QTL requirement, although their ability to obtain advances is restricted if they do not meet the QTL requirement. The amendments should prove beneficial to many non-savings association members by allowing them to report increases in their levels of qualified thrift investments and, in some cases, satisfy the QTL requirement. Because certain of the items authorized by EGRPRA to be included in the QTL calculation are not separately identified on a non-savings association member's published financial reports, such as a call report, the Federal Home Loan Banks (Banks) have no readily available source from which to obtain or verify that information. To allow the Banks to include the newly authorized items when conducting their annual QTL calculation of their non-savings association members, the Finance Board has determined that the Banks may rely on a certification from their members of any relevant QTL financial information that is not available from published financial reports. Because the Banks must complete the annual QTL calculations for calendar year 1996 no later than April 15, 1997, the Finance Board is issuing this rule as an interim final rule. As the certification process raises a number of questions about how best the Banks can determine the QTL status of their non-savings association members, and because the Office of Thrift Supervision (OTS) is in the process of a rulemaking relating to the EGRPRA amendments, the Finance Board has determined to solicit comments on the interim final rule for a period of 30 days.

DATES: The interim rule is effective on February 27, 1997. Comments must be received by March 31, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven P. Wojtaszek, Financial Analyst, Financial Research Division, Office of Policy, (202) 408–2863, or Neil R. Crowley, Senior Attorney, Office of General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, membership in the Federal Home Loan Bank System (System) had been comprised predominantly of savings associations, which tended to concentrate their investments in residential mortgage loans. In 1987, Congress established the QTL test, which required savings associations to maintain 60 percent of their assets in instruments related to domestic residential real estate or manufactured housing. Competitive Equality Banking Act of 1987, Public Law 100–86, section 104(c), 101 Stat. 571–573 (August 10, 1987). Among other things, a savings association that failed the QTL test was limited in the amount of advances that it could receive from its Bank. *Id.* section 105. In 1989, Congress authorized commercial banks and credit unions, institutions that historically had not been so concentrated in residential mortgage lending, to become members of the System. Financial Institutions Reform, Recovery , and Enforcement Act of 1989 (FIRREA), Public Law 101–73, section 704(a), 103 Stat. 415 (August 9, 1989),

codified at 12 U.S.C. 1424(a). FIRREA also limited the amount of advances that such non-savings association members could obtain from their Bank, and imposed a 30 percent System-wide limit on the aggregate amount of advances that could be outstanding to such non-QTL members. 12 U.S.C. 1430(e).

As a general matter, the QTL test now requires a savings association to maintain 65 percent or more of its portfolio assets in certain designated instruments, which are characterized as ''qualified thrift investments.'' The QTL test requires one to determine an institution's ''actual thrift investment percentage'' (ATIP), which is obtained by dividing the institution's ''qualified thrift investments'' by its ''portfolio assets.'' The QTL test applies directly only to savings associations, and OTS, as the principal federal regulator of savings associations, determines their QTL compliance. The QTL test does not apply to commercial banks, credit unions, or insurance companies, although if such institutions become members of the System their ability to obtain advances is restricted if they do not meet the QTL test. 12 U.S.C. 1430(e). The Banks are required to determine the ATIP for each non-savings association member at least annually, between January 1 and April 15, based on financial information as of December 31 of the prior calendar year. 12 CFR 935.13(a)(3).

In EGRPRA (Public Law 104–208, 110 Stat. 3009, September 30, 1996), Congress made it easier for all members to achieve QTL compliance by broadening the universe of ''qualified thrift investments'' that may be included in calculating an institution's ATIP. Those changes could benefit non-savings association members by allowing them to increase their ATIP, possibly to the point of satisfying the QTL test. Even those members that do not meet the QTL requirement should benefit from the amendments because an increase in their ATIP should allow them to obtain a greater amount of advances based on their existing level of Bank stock. Under the amendments made by EGRPRA, a member now may include without limit as ''qualified thrift investments'' the full amount of its loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts. In addition, institutions may include an increased amount of consumer loans, subject to certain aggregate limits. For purposes of the EGRPRA amendments, the director of OTS is required to define the terms ''small business,'' ''small business loans,'' and ''credit card,'' which the OTS has done by means of an interim final rule. 61 FR 60179 (November 27, 1996), to be codified at, 12 CFR 560.3.

Although EGRPRA clearly specifies the types of additional assets that may be included as qualified thrift investments (and OTS has defined small business loans), the Banks cannot readily incorporate those items into their annual QTL calculations because the call reports of the commercial bank and credit union members, and the comparable reports of insurance company members, do not separately identify those items. The absence of these QTL items from the available regulatory financial reports of the non-savings association members complicates the Banks' annual task of determining the ATIP for those members. As a consequence of the additional items added by EGRPRA, the number of elements within the QTL calculation for which the Banks lack accurate and readily available data has increased, which introduces a greater element of uncertainty into the accuracy of the Banks' QTL determinations. This is not so much of a concern with respect to savings association members because OTS routinely examines the associations for QTL compliance, and the Finance Board and the Banks can rely on those OTS determinations. With respect to the non-savings association members, however, the principal federal regulators do not conduct examinations for QTL compliance and the Banks cannot look to those regulators as a source for the required QTL information.

For example, a commercial bank's outstanding credit card loans are separately stated on its Report of Condition and Income (Call Report), but its education loans and small business loans (at least as defined for QTL purposes) are not separately identified. Although the Call Report includes information about small business loans, that information does not correspond to the information that the Banks require when making the annual QTL calculations for their non-savings association members. The OTS regulation defines the term ''small business loans'' by incorporating the definitions from the Small Business Act and its implementing regulations promulgated by the Small Business Administration (SBA). Thus, for QTL purposes, a small business loan is one made to a ''small business.'' Under the SBA regulations, a ''small business'' is an entity the gross receipts of which (or the number of its employees) fall below certain thresholds specified by SBA. By comparison, the Call Report defines a small business loan based on the size of the loan, not the size of the borrowing entity. Thus, the Banks' use of the ''small business loan'' information that is available from the Call Report likely will overstate the amount of ''small business loans'' that are eligible to be used in deter mining a commercial bank member's QTL status. The same problem exists with respect to the reports submitted by credit union and insurance company members, neither of which separately identify the amount of loans meeting the SBA definition of small business loans.

This disparity between the statutory requirements of the QTL test and the information that is readily available to the Banks is not limited to the items added by EGRPRA. For example, the QTL test includes within a member's ''portfolio assets'' certain government, agency, and other debt securities with specified maturities (from two to five years), none of which is separately identified by maturity on the published financial statements. Similarly, the QTL test includes within a member's ''qualified thrift investments'' certain construction loans related to one-to four-family residential properties, 50 percent of residential mortgage loans sold during a calendar quarter, 200 percent of affordable housing-related loans, and 200 percent of service facility loans, none of which is separately identified on the available reports.

The Finance Board believes that non-savings association members can benefit from the newly authorized qualified thrift investments, and that it is appropriate to allow the Banks to incorporate the new classes of investments into their ATIP calculations for the calendar year ending December 31, 1996. Of supervisory concern to the Finance Board, however, is how best to ensure that the Banks conduct their annual QTL determinations consistently with Section 10(e) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1430(e). The Finance Board believes that it would be imprudent for the Banks to confer QTL status on non-savings association members that cannot demonstrate that their qualified thrift investments actually include the claimed amount of the newly authorized investments.

One means of ensuring this result would be through an examination process. The Finance Board believes that it has the authority, under Sections 2A(a)(3), 2B(a), and 22, of the Bank Act, 12 U.S.C. 1422a(a)(3), 1422b(a), and 1442(a), to examine, or to require the Banks to request an examination of, individual members if necessary to ensure that the Banks operate in compliance with the law. The Finance

Board believes, however, that the more reasonable and efficient approach is to allow the Banks to obtain that information from their members. As a matter of practice, some Banks already obtain from their members information regarding certain QTL items that are not separately identified on the published financial reports. For example, some Banks obtain all QTL-related financial data from the member and use the published financial reports, such as a Call Report, to confirm the general accuracy of the information. Other Banks calculate a member's ATIP as a service to their members using the most recently published financial reports and either obtain any additional data from the member or estimate it from other known sources.

Accordingly, through this interim final rule the Finance Board will allow the Banks to accept from their non-savings association members supplemental QTL information that does not appear in the published financial statements. The chief executive officer (CEO) of the member must certify to the Bank that the information is accurate and complete as of the date provided. The Finance Board believes that such an arrangement strikes an appropriate balance between its need to ensure that the Banks base their QTL calculations on accurate financial information, and the practice of allowing the Banks to manage their own business. To allow the Banks to make use of the newly authorized QTL categories prior to the April 15, 1997, deadline for their QTL calculations, the Finance Board has determined to issue this rule as an interim final rule, but also is soliciting comments on the specific provisions of the rule. The Finance Board appreciates that OTS may yet revise the QTL definitions established through its recent interim rule, and intends to monitor the OTS rulemaking proceeding. The Finance Board anticipates that it will make corresponding changes to its advances regulation should the OTS further amend the QTL regulation in any material respect.

II. Description of the Interim Final Rule

The interim rule amends the definitions of ''actual thrift investment percentage,'' ''Qualified Thrift Lender,'' and ''Qualified Thrift Lender test,'' in the Finance Board's advances regulation, 12 CFR 935.1, to delete references to OTS regulations that no longer exist. The interim rule also amends the Finance Board's advances regulations, 12 CFR 935.13(a)(3), to direct the Banks to use the financial information from the call report (which term is defined to include the published financial reports submitted by credit union and insurance company members) as the primary source for QTL determinations. In those cases in which not all of the information needed to perform an accurate QTL calculation is included in the call report, the Bank may accept other information submitted by the member, provided that the CEO of the member certifies in writing that the information is accurate and complete as of the relevant date. As it appears to have been the practice of some Banks to obtain the required financial information for the QTL calculation from their members and then compare that information to the call report, the rule allows the Banks to continue to obtain information from their members as the first step in the process, provided that any information not in the call report must be subject to the same certification requirement. By requiring the formality of a certification from the CEO the Finance Board believes that the Banks will have sufficient assurance that the information on which they conduct their determinations is accurate, which is the minimum effort required to ensure compliance with the Bank Act.

The Finance Board does not intend to require the Banks to obtain a CEO certification from every non-savings association member as a matter of course. Such a certification is necessary only when a member wishes the Bank to include in its annual ATIP calculation qualified thrift investments or portfolio assets that do not appear in its published financial reports. If a member has no such investments or assets, then the Bank need not require a certification from the member. Similarly, if a member has a portfolio of small business loans or education loans, but the inclusion of those items in the calculation would not materially change the member's ATIP, then a member could elect not to provide a certification. If a member were to have a substantial portfolio of education loans, for example, but only minor investment in small business loans, the member could opt to certify the number of education loans and omit, or indicate a zero balance, for the category of small business loans. The Finance Board specifically requests public comment on the certification process, as well as the content and format for the certification.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, the Banks are not ''small entities.'' *Id.* 601(6). As the interim final rule would apply only to the Banks, it does not impose any additional regulatory requirements on small entities of the type contemplated by the RFA. Thus, in accordance with the provisions of the RFA, the Board of Directors of the Finance Board hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. *Id.* 605(b).

IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in § 935.13 of the interim rule, described more fully in the **SUPPLEMENTARY INFORMATION.** The Banks will use the information collection to determine whether a non-savings association member satisfies the statutory QTL requirement. Only Bank members that meet the QTL standards may maintain unrestricted access to long-term Bank advances. *See* 12 U.S.C. 1430(e). Responses are required to obtain or retain a benefit. *See id.* The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy.

Likely respondents and/or recordkeepers will be non-savings association members of a Bank. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:	
a. Number of respondents	4,272
b. Total annual responses	4,272
Percentage of these responses collected electronically	0
c. Total annual hours requested	3,930
d. Current OMB inventory	0
e. Difference	3,930
The estimated annual reporting and recordkeeping cost burden is:	
a. Total annualized capital/startup costs	0
b. Total annual costs (O&M)	0
c. Total annualized cost requested	$126,660
d. Current OMB inventory	0
e. Difference	$126,000

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507 of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507. Comments regarding the collection of information may be submitted in writing to the

Finance Board at the address above, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503 by March 31, 1997.

V. Other Procedural Requirements

The interim final rule does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866.

The Finance Board has determined that the notice and comment procedure ordinarily required by the Administrative Procedure Act (APA) is not required in this instance. The APA authorizes agencies to waive the notice and comment procedures when the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). The Finance Board has determined that compliance with the APA procedure in this instance would be impracticable, unnecessary, and contrary to the public interest because it effectively would deny the Banks the opportunity to incorporate the newly authorized QTL investments into their annual QTL calculations for the current year. As described in the **SUPPLEMENTARY INFORMATION**, the Banks must calculate the QTL ratio of each non-savings association member between January 1 and April 15 of each year. If the Finance Board were to observe the notice and comment procedures, it is unlikely that the Finance Board could promulgate a final rule sufficiently in advance of the April 15 deadline for the Banks to incorporate its provisions into their current QTL calculations. Nonetheless, because the Finance Board believes that public comments aid in effective rulemaking, it will accept written comments on the interim rule until March 31, 1997.

The Finance Board also has determined that the 30-day delay of the effectiveness provisions of the APA may be waived in these circumstances. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement, among other things, where a substantive rule relieves a restriction, or otherwise for good cause found by the agency. As with the APA notice and comment procedures, described above, the Finance Board finds that there is good cause for making the interim rule effective on February 27, 1997, because it will allow the Banks to take advantage of the EGRPRA's amendments in calculating the QTL ratios for the current year. Moreover, the absence of accurate call report information about the categories of newly authorized QTL assets impairs the ability of the Banks to implement the EGRPRA's amendments, which problem is remedied by the interim rule. By eliminating a practical impediment to the implementation of the QTL amendments the interim rule relieves a restriction that might otherwise prevent the Banks from realizing the benefits intended by Congress.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby amends title 12, chapter IX, part 935 of the Code of Federal Regulations, as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Section 935.1 is amended by republishing the introductory text and revising the definitions for ''Actual thrift investment percentage'', ''Qualified Thrift Lender'', and ''Qualified Thrift Lender test'' to read as follows:

§ 935.1 Definitions

As used in this part:

* * * * *

Actual thrift investment percentage or *ATIP* has the same meaning as used in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)), except that the ATIP will be calculated and applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

Qualified Thrift Lender or *QTL* means the term as defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)). A non-savings association member which meets the QTL test as applied by the Banks will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the asset test described in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)), except that the QTL test will be applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

3. In § 935.13, paragraph (a)(3) is revised to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders

(a) Restrictions on advances to non-QTL members. * * *

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a Bank shall use the financial information from the member's December 31 call report as the primary source of information. A Bank making ATIP determinations more frequently than annually shall use the member's most recent call report. If any information necessary for determining the member's ATIP is not separately identified on a member's call report, the Bank may rely on a written certification provided by the member as to the dollar amount and composition of those other assets that meet the definitions of ''qualified thrift investments'' or ''portfolio assets.'' Notwithstanding the preceding two sentences, a Bank may, at its option, accept a certification from a non-savings association member as to the dollar amount and composition of all assets that meet the definitions of ''qualified thrift investments'' or ''portfolio assets.'' In any case in which a Bank relies on a certification from a non-savings association member as to its level of ''qualified thrift investments'' or ''portfolio assets,'' the certification must be in writing and signed by the chief executive officer of the member.

(iii) As used in this section, the term ''call report'' shall include:

(A) With respect to a commercial bank, the annual or quarterly ''Report of Condition and Income'' submitted to its appropriate Federal banking agency;

(B) With respect to a credit union, the quarterly or semi-annual call report submitted to the National Credit Union Administration; and

(C) With respect to an insurance company, its National Association of Insurance Commissioners annual regulatory filing.

* * * * *

Dated: February 6, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–4795 Filed 2–26–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–11–AD; Amendment 39–9948; AD 97–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that currently requires replacing the existing standby generator control unit (GCU) with a new improved standby GCU. That action was prompted by reports of improper functioning of the standby GCU. This amendment requires replacement of the GCU on addition affected airplanes. For some airplanes, it also will require that a wiring modification be accomplished prior to replacement of the GCU. The actions specified by this AD are intended to prevent such improper functioning of the GCU, which could result in the loss of the standby emergency generation system.

DATES: Effective April 3, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 3, 1997.

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: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–01–01, amendment 39–6845 (55 FR 51895, December 18, 1990), which is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, was published in the Federal Register on October 23, 1996 (61 FR 54963). The action proposed to supersede AD 91–01–01 to continue to require replacement of the existing standby GCU with an improved standby GCU. The action also proposed to require the identical replacement to be accomplished on additional airplanes. In addition, for some airplanes, the action proposed that a wiring modification be accomplished prior to replacement of the GCU.

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

Support for the Proposal

Both commenters support the proposed AD.

Conclusion

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

Cost Impact

There are approximately 106 Airbus Model A320 series airplanes of U.S. registry that will be affected by this AD. Of this number, 18 were previously subject to the requirements of AD 91–01–01, and the remaining 88 are the airplanes that have been added to the AD applicability by this action.

The replacement of the GCU that is required by this AD takes approximately 1.5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $450 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $57,240 for the entire affected fleet (or $540 per airplane). However, based on the effective date and the compliance time established by AD 91–01–01, the FAA assumes that the 18 airplanes that were previously subject to that AD already have completed the required replacement of the GCU. Therefore, the future cost impact of the replacement action is only $47,520 (for the 88 airplanes that have been added to the applicability of the AD).

For airplanes on which the modification of the wiring assembly is required, it will take approximately 8.5 work hours to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators of those airplanes is estimated to be $510 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the new 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 39–6845 (55 FR 51895, December 18, 1990), and by adding a new airworthiness directive

(AD), amendment 39–9948, to read as follows:

97–05–04 Airbus Industrie: Amendment 39–9948. Docket 96–NM–11–AD. Supersedes AD 91–01–01, Amendment 39–6845.

Applicability: Model A320 series airplanes; on which a generator control unit (GCU) having part number (P/N) 520915 has not been installed, or on which Airbus Modification 21052 (reference Airbus Service Bulletin A320–24–1022) and Airbus Modification 21736 (reference Airbus Service Bulletin A320–24–1035) have not been accomplished; 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 loss of the standby emergency generation system, which provides necessary back-up capability when both main generators fail, accomplish the following:

Note 2: Airbus Service Bulletin A320–24–1035 and Airbus Service Bulletin A320–24–1022 refer to Vickers Service Bulletin No. 520754–24–01 as an additional source of specific procedural information.

(a) For Model A320–111, –211, and –231 series airplanes; having serial numbers 003 through 058, inclusive, 060 through 067, inclusive, 069 through 072, inclusive, 074 through 083, inclusive, and 085: Within 150 days after January 28, 1991 (the effective date of AD 91–01–01, amendment 39–6845), remove one generator control unit (GCU) identified as 1XE part number (P/N) 520754, and install a modified GCU identified as 1XE, P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 1, dated February 27, 1990, or Revision 2, dated June 24, 1994. Following installation, perform an operational test of the emergency generation system, emergency GCU from the centralized fault display system, and the static inverter, in accordance with the service bulletin.

(b) For airplanes not subject to paragraph (a) of this AD: Within 150 days after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

Note 3: Replacement of the GCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–24–1035, Revision 1, dated February 27, 1990, is considered acceptable for compliance with the actions specified in this paragraph.

(1) For airplanes equipped with GCU 1XE having P/N 520754: Replace the GCU 1XE, having P/N 520754, in zone 125 of the avionics compartment, with a modified GCU 1XE, having P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 2, dated June 24, 1994. Prior to further flight following accomplishment of the replacement, perform an operational test of the affected components in accordance with that service bulletin.

(2) For airplanes equipped with GCU 1XE having P/N 520738: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD:

(i) Modify the wiring in relay box 103VU, the wiring in power center AC/DC emergency 106VU, and the wiring between 103VU and 106VU, in accordance with Airbus Service Bulletin A320–24–1022, Revision 1, dated February 27, 1990.

Note 4: Modification accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–24–1022, dated June 16, 1989, is considered acceptable for compliance with this paragraph.

(ii) After modifying the wiring, replace the GCU 1XE, having P/N 520738, located in the nose gear well in zone 125, with a modified GCU 1XE, having P/N 520915, in accordance with Airbus Service Bulletin A320–24–1035, Revision 2, dated June 24, 1994. Prior to further flight following accomplishment of the replacement, perform an operational test of the affected components in accordance with that service bulletin.

(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, Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

(e) The actions shall be done in accordance with the following Airbus Service Bulletins, which contain the specified lists effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
A320–24–1035, Revision 1, February 27, 1990	1, 2	1	February 27, 1990.
	3, 4	Original	October 20, 1989.
A320–24–1035, Revision 2, June 24, 1994	1–4	2	June 24, 1994.
A320–24–1022, Revision 1, February 27, 1990	1, 5, 6, 13, 14, 19–21	1	February 27, 1990.
	2–4, 7–12, 15–18, 22	Original	June 16, 1989.

The incorporation by reference of the service documents listed above is 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.

(f) This amendment becomes effective on April 3, 1997.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4715 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–116–AD; Amendment 39–9949; AD 97–05–05]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a

one-time check of the clearance between certain braces that connect the wings to the fuselage and the frame to which the top fairing is attached; and modification of the frame's Z-profile if the clearance is insufficient to prevent the braces from coming in contact with the frame. In addition, this amendment requires a one-time check of these braces to detect damage or wear; and repair, if necessary. This amendment is prompted by a report indicating that insufficient clearance between these braces and the frame could result in wear and consequent breaking of the braces. The actions specified by this AD are intended to prevent failure of these braces, which could result in unstable movement of the wings in relation to the fuselage and adversely affect the aerodynamic characteristics of the wings.

DATES: Effective April 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 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 Dornier Model 328–100 series airplanes was published in the Federal Register on December 13, 1996 (61 FR 65492). That action proposed to require a check of the clearance between the diagonal braces on the left and right wings and the frame to which the top fairing is attached; and modification of the frame's Z-profile if there is not a certain minimum clearance between each brace and the frame. In addition, that action also proposed to require a check of these braces to detect damage or wear resulting from contact between each brace and the frame.

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 5 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours 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 $1,200, or $240 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

97–05–05—Dornier: Amendment 39–9949. Docket 96–NM–116–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3014 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal braces that connect the left and right wings to the fuselage, which could result in unstable movement of the wings and adversely affect the aerodynamic characteristics of the wings, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Check the clearance between the diagonal braces that connect the left and right wings to the fuselage and the Z-profile of the frame to which the top fairing is attached, in accordance with Dornier Service Bulletin SB–328–53–051, dated August 16, 1994.

(i) If the clearance meets or exceeds the minimum limits specified in the service bulletin, no further action is required by paragraph (a)(1) of this AD.

(ii) If the clearance is less than the minimum limits specified in the service bulletin, prior to further flight, modify the Z-profile of the frame to which the top fairing is attached, in accordance with the service bulletin.

(2) Check each diagonal brace for damage or wear, in accordance with the service bulletin.

(i) If no damage or wear is detected, no further action is required by paragraph (a)(2) of this AD.

(ii) If any damage or wear is detected, prior to further flight, repair the diagonal brace in

accordance with a method approved by the Manager Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(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, Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–53–051, dated August 16, 1994. 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 Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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.

(e) This amendment becomes effective on April 3, 1997.

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4717 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing a Supplemental Order authorizing members of the Montreal Exchange (''Exchange'') designated for relief under Commission rule 30.10 (''Exchange Member'' or ''Member'') to solicit and accept orders from U.S. customers for otherwise permitted transactions [1] on all non-U.S. exchanges where such Members are authorized by the regulations of the Montreal Exchange to conduct futures business for customers.

This Supplemental Order is issued pursuant to Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, and the Commission's Order dated March 14, 1989, granting relief under rule 30.10 to designated members of the Montreal Exchange.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Permitting Members of the Montreal Exchange Designated for Relief Under Commission Rule 30.10 to Solicit and to Accept Orders from U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Exchanges Where Such Members Are Authorized by Exchange Regulations to Conduct Futures Business for Customers

On March 14, 1989, the Commission issued an Order granting relief under rule 30.10 to designated members of the Montreal Exchange, 54 FR 11179 (March 17, 1988) (''Original Order''). The Original Order limited the scope of permissible brokerage activities undertaken by designated Montreal Exchange members on behalf of U.S. customers to transactions ''on or subject to the rules of the Exchange.'' 54 FR at 11811 (condition (1)(c)). Subsequently, however, the Commission has issued rule 30.10 orders which did not include this limitation.[2]

By letter dated March 26, 1996, the Montreal Exchange petitioned the Commission to revise the Original Order to permit designated members of the Montreal Exchange to solicit or accept orders from U.S. foreign futures and options customers for all otherwise permitted transactions on all non-U.S. exchanges [3] where Exchange Members are authorized by Exchange regulations to conduct futures and options business for customers, subject to the Montreal Exchange's and Members' continued compliance with the terms of the Original Order and such other conditions as may be imposed by the Commission.[4] The Exchange further represented that it would carry out its compliance, surveillance, and rule enforcement activities with respect to solicitations and acceptances of orders by designated Montreal Exchange members of U.S. customers for otherwise permitted transactions on all non-U.S. markets where such Members are authorized by Exchange regulations to conduct futures and options business for U.S. customers.

Upon due consideration and for the reasons stated in the Original Order, the Commission has determined to issue this Supplemental Order permitting Montreal Exchange members designated for rule 30.10 relief to solicit and to accept orders from U.S. foreign futures and options customers for otherwise permitted transactions in commodity futures and commodity options (including options on futures) on or subject to the rules of any exchange where such Montreal Exchange Members are authorized by Exchange regulations to conduct options and futures business for customers, other than a contract market designated as such pursuant to section 5 of the CEA,

[1] Relief under this Supplemental Order extends only to those products falling within the jurisdiction of the Commodity Exchange Act (''CEA'' or ''Act'') and remains subject to existing product restrictions under the CEA and Commission regulations and procedures thereunder related to stock indices and foreign government debt (*see* CEA section 2(a)(1)(B)(v) and Securities and Exchange Commission rule 3a12–8).

[2] In 1989 the Commission issued a series of rule 30.10 orders authorizing firms designated by the U.K. Securities and Investments Board and certain U.K. ''Self-Regulating Organisations'' to conduct brokerage activities for U.S. customers on any non-U.S. exchange designated under U.K. law. *See* 54 FR 21599, 21600 (May 19, 1989) (SIB), 54 FR 21604, 21605 (May 19, 1989) (Association of Futures Brokers and Dealers (''AFBD'')), 54 FR 21609, 21610 (May 19, 1989) (The Securities Association (''TSA'')), and 54 FR 21614, 21615 (May 19, 1989) (Investment Management Regulatory Organisation). The AFBD and TSA subsequently merged to form the Securities and Futures Association, which became the successor organization for rule 30.10 purposes. *See* 56 FR 14017 (April 5, 1991).

The Commission also has issued similar supplemental relief to the Sydney Futures Exchange, *see* 58 FR 19209 (April 13, 1993), and to the New Zealand Futures and Options Exchange, *see* 61 FR 64985 (December 10, 1996).

[3] The term ''non-U.S. exchange'' refers to a foreign board of trade which is defined in Commission rule 1.3(ss), 17 CFR § 1.3(ss) as: Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the CEA are not within the scope of this Order.

[4] Letter dated March 26, 1996, from Johanne Dupont, Legal Counsel to the Montreal Exchange, to Ms. Jane Kang, CFTC Division of Trading and Markets (''March 26, 1996 Request'').

undertaken by such Members from a location in Quebec.

The expanded rule 30.10 relief provided under this Supplemental Order, however, is contingent on the Montreal Exchange's and Exchange Members' continued compliance with the Original Order and their compliance with the following conditions:

(1) The Montreal Exchange will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated Exchange Members of U.S. customers for options and futures business on all non-U.S. exchanges listed in Article 7452 of the Exchange rules to the same extent that it conducts such activities in regard to Exchange business;

(2) It will cooperate with the Commission with respect to any inquiries concerning any activity which is the subject of this Supplemental Order, including sharing the information specified in Appendix A to the Part 30 rules, 17 CFR Part 30, on an ''as needed'' basis on the same basis as set forth in the Original Order;

(3) Each Montreal Exchange Member firm confirmed for relief under the Original Order seeking to engage in activities which are the subject of this Supplemental Order must agree to provide the books and records related to such activities required to be maintained under the applicable Exchange regulations and laws in effect in Quebec on the same basis as set forth in the Original Order.[5]

Furthermore, the Commission seeks to ensure that the funds of U.S. foreign futures and options customers will be subject to consistent protection irrespective of whether the Montreal Exchange Member effects trades directly on the Montreal Exchange (where under the terms of the Original Order Exchange Members are required to maintain a separate account in a manner consistent with the provisions of rule 30.7)[6] effects trades on another foreign futures and options exchange of which the Montreal Exchange firm is a member, or trades through the intermediation of a foreign exchange member. Accordingly, the expanded relief permitting Montreal Exchange Member firms to engage in foreign futures and options transactions for U.S. customers other than on the Montreal Exchange under this Supplemental Order will be contingent upon compliance by the Exchange Member firm with the following additional conditions:

(4) Foreign futures and options exchanges on which the Montreal Exchange Member firm may engage in transactions on behalf of U.S. customers are those non-U.S. exchanges identified in Article 7452 of the Exchange rules, provided however, that Exchange Members may not engage in any transactions on behalf of U.S. customers on an exchange designated as a contract market under section 5 of the CEA;

(5) The Montreal Exchange Member firm will continue to comply with the terms of the Original Order with respect to transactions effected for U.S. customers on the Montreal Exchange;[7]

(6) With respect to transactions effected on any other non-U.S. futures and options exchange on behalf of U.S. customers, whether by the Montreal Exchange Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the Montreal Exchange Member complies with paragraphs (6) 1 or 2 below:

1. a. must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

b. may not commingle such money, securities and property with the money, securities or property of the Member, with any proprietary account of such Member and may not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the Member or any proprietary account of the Member;

c. may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (6)1. a. above, money, securities or property held for or on behalf of non-U.S. customers of the Member for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph (6)1. a. above, plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph (6)1. a. above, plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

d. the separate account or accounts referred to in paragraph (6)1. a. above must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(1) another person registered with the Commission as a futures commission merchant (''FCM'') or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(2) the clearing organization of any foreign board of trade;

(3) any member and/or clearing member of such foreign board of trade; or

(4) a bank or trust company which any of the depositories identified in (1)–(3) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

e. the separate account or accounts referred to in paragraph (6)1. a. may be deemed a good secured amount depository only if the Member obtains and retains in its files for the period required by applicable law and Exchange regulations a written acknowledgement from such separate account depository that:

(1) it was informed that such money, securities or property are held for or on behalf of customers of the Member; and

(2) it will ensure that such money, securities or property will be held and treated at all times effectively in accordance with the provisions of this paragraph; and, *provided further*, that the Member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the Member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in this paragraph (6)1 herein;[8] or,

[5] Montreal Exchange member firms which currently operate under the Original Order will be deemed to have consented to condition (3) by effecting transactions pursuant to this Supplemental Order. Exchange members which apply for confirmation of rule 30.10 relief subsequent to the issuance of this Supplementary Order must submit representations to the Commission consistent with condition (3) of this Order.

[6] *See* paragraph (2)(f) of the Original Order.

[7] *See* CFTC Advisory No. 87–4, Foreign Futures and Options: Compliance and Operational Questions and Answers, November 18, 1987, *reprinted in Comm. Fut. L. Rep.* (CCH) ¶ 23,975.

[8] This proviso is intended to ensure that the originating Member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at *all* subsequent depositories, so that it may determine whether it may count a particular intermediary or clearing house as a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph (6)2. The Member initially would discuss with its immediate intermediary broker whether funds will be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this condition would be satisfied by the Member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or regulatory references.

This requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described in paragraph (6) would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not intended to create a duty on a rule 30.10 firm that it audit any intermediaries for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms must engage in a due diligence inquiry before customer funds are sent to another intermediary and take appropriate action (*i.e.*, set aside funds) in

2. must set aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. § 30.7, and treat those funds in the manner described by that rule.

The expanded rule 30.10 relief provided by this Supplemental Order also is contingent upon the Montreal Exchange's and Montreal Exchange Members' continued compliance with the Original Order and the enumerated conditions above.

This Supplemental Order is issued based on the information provided to the Commission as set forth herein, including the letter dated March 26, 1996, from the Montreal Exchange. Any changes or material omissions may require the Commission to reconsider the authorization granted in this Supplemental Order.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular Member, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific Member, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

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

2. Appendix C to Part 30 is amended by adding the following citation under the existing entry for Firms designated by the Montreal Exchange to read as follows:

Appendix C to Part 30–Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Montreal Exchange.

* * * * *

FR date and citation: February 27, 1997, 62 FR.

* * * * *

Issued in Washington, D.C. on February 21, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97–4865 Filed 2–26–97; 8:45 am]

BILLING CODE 6351–01–P

the event that it becomes aware of facts leading it to conclude that customer funds are not being handled consistent with the requirements of Commission rules or relevant rule 30.10 order by any subsequent intermediary or clearing house.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7394; 34–38319; 35–26672; 39–2346; IC–22522]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to 17 CFR Part 232 (Regulation S–T) will be effective on March 10, 1997. The new edition of the EDGAR Filer Manual (Release 5.20) will be effective on March 10, 1997. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of March 10, 1997.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0591; and for questions with respect to documents subject to review by the Division of Corporation Finance, Margaret R. Black at (202) 942–2940.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual (''Filer Manual''), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format. Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[2]

In this update, several submission types have been added to accommodate electronic submission of certain investment company filings. Specifically, new EDGAR submission types ''40–17F1'' and ''40–17F2'' have been added to accommodate the filing of Forms N–17F–1[3] and N–17F–2;[4] submission type ''N–23C–2,'' to accommodate filings under Rule 23c–2(b);[5] and submission types ''N–23C3A,'' ''N–23C3B,'' and ''N–23C3C,'' to accommodate the filing of Form N–23C–3,[6] pursuant to Rule 23c–3.[7]

With respect to documents subject to review by the Division of Corporation Finance, two additional submission types have been added to accommodate more completely the electronic submission of filings made pursuant to Rule 462(b)[8] under the Securities Act of 1933.[9]

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (April 1, 1993) (58 FR 18638). The most recent update to the Filer Manual was adopted in Release No. 33–7351 (October 2, 1996) [61 FR 52283], and became effective on October 7, 1996.

[2] See Release Nos. 33–6977 (February 23, 1993) (58 FR 14628), IC–19284 (February 23, 1993) (58 FR 14848), 35–25746 (February 23, 1993) (58 FR 14999), and 33–6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. See also Release No. 33–7122 (December 19, 1994) (59 FR 67752), in which the Commission made the EDGAR rules final and applicable to all domestic registrants and adopted minor amendments to the EDGAR rules; Release No. 33–7351, in which the Commission adopted the most recent update to the Filer Manual; and Release No. 33–7369 (December 5, 1996) (61 FR 65440), in which the Commission proposed additional minor technical amendments to the EDGAR rules.

[3] 17 CFR 274.21 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 17f–1).

[4] 17 CFR 274.220 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 7f–2).

[5] 17 CFR 240.23c–2(b) (notice by closed-end investment companies of intention to call or redeem their own securities).

[6] 17 CFR 274.221 (notification of periodic repurchase offer).

[7] 17 CFR 240.23c–3. Submission type ''N–23C3A'' is to be used for filings made pursuant to Rule 23c–3(a) only; ''N–23C3B,'' Rule 23c–3(b) only; and ''N–23C3C,'' Rule 23c–3(a) and (b).

[8] 17 CFR 230.462(b).

[9] 15 U.S.C. 77a *et seq.* The new submission types are: S–4MEF (for use in connection with registration statements filed on Form S–4 (17 CFR 239.25) and F–4MEF (for use in connection with registration statements on Form F–4 (17 CFR

Continued

Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The revised Filer Manual and the amendment to Rule 301 will be effective on March 10, 1997.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[10] It follows that the requirements of the Regulatory Flexibility Act [11] do not apply.

The effective date for the updated Filer Manual and the rule amendment is March 10, 1997. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.20 on March 8, 1997. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[12] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[13] Section 20 of the Public Utility Holding Company Act of 1935,[14] Section 319 of the Trust Indenture Act of 1939,[15] and Sections 8, 30, 31, and 38 of the Investment Company Act.[16]

239.34). All other submission types used for Rule 462(b) filings were added to the EDGAR system in November 1995. See Release No. 33–7241 (November 13, 1995) (60 FR 57682).

[10] 5 U.S.C. 553(b)

[11] 5 U.S.C. 601–612.

[12] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[13] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78*ll*.

[14] 15 U.S.C. 79t.

[15] 15 U.S.C. 77sss.

[16] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The March 1997 edition of the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.20) is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

Dated: February 21, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4797 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5691–3]

Clean Air Act Final Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the California Air Resources Board on behalf of the South Coast Air Quality Management District (South Coast or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: The final interim approval of the South Coast program is effective on March 31, 1997.

ADDRESSES: Copies of the District's submittals and other supporting information used in developing the final interim approval and direct final interim approval are available for inspection (docket number CA–SC–96–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (the Act), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not

fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program. On July 1, 1996, EPA promulgated the part 71 regulations that govern EPA's implementation of a federal operating permits program in a state or tribal jurisdiction. See 61 FR 34202. On July 31, 1996, EPA published a notice at 61 FR 39877 listing those states whose part 70 operating permits programs had not been approved by EPA and where a part 71 federal operating permit program was therefore effective. In that notice EPA stated that part 71 is effective in the South Coast. The EPA also stated its belief that it would promulgate interim approval of the South Coast part 70 program prior to the deadline for sources to submit permit applications under part 71. Today's action cancels the applicability of a part 71 federal operating permits program in the District. The part 71 application deadline contained in the July 31, 1996 notice is now superseded by the South Coast part 70 application deadlines.

On August 29, 1996, EPA published a notice of direct final rulemaking (NDFR) in which it promulgated direct final interim approval of the operating permits program for the South Coast Air Quality Manangement District. See 61 FR 45330. The notice stated that if EPA recieved adverse comment, it would withdraw the final action. On the same date, EPA published a notice of proposed rulemaking (NPR) that would serve as a proposal for interim approval, if EPA were to receive adverse comments on the direct final rule. See 61 FR 45379. The NDFR identified several deficiencies in the District program and proposed that the South Coast make specified changes to correct those deficiencies as a condition of full approval.

EPA received four letters addressing the NDFR, three of which contained adverse comments. The Agency published a notice on November 4, 1996, withdrawing its direct final rule. See 61 FR 56631.

The majority of comments received by EPA were directed toward questions of program implementation, rather than the action EPA proposed to take on the District program. In this document, EPA is responding to those comments that relate to the interim approval action, along with certain other issues raised during the public comment period. The EPA has addressed all of the comments received on the proposal in a separate ''Response to Comments'' document contained in the docket at the Regional Office. After considering the comments, EPA has affirmed that the changes proposed in the NDFR are necessary. In this final interim approval, EPA has not therefore modified the list of changes (''interim approval issues'') that was set forth in section II.B. of the NDFR.

The EPA's NDFR also proposed approval, under section 112(l), of South Coast's mechanism for accepting delegation of section 112 standards as promulgated. The EPA did not receive public comment on this proposed action for the District program.

II. Final Action and Implications

A. Analysis of State Submission

South Coast's title V program was submitted by the California Air Resources Board (CARB) on December 27, 1993. The South Coast submittal included the following implementing and supporting regulations: Regulation XXX—Title V Permits; Rule 204—Permit Conditions; Rule 206—Posting of Permit to Operate; Rule 210—Applications; Rule 301—Permit Fees; Rule 518—Hearing Board Procedures for Title V Facilities; and Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II. The EPA found the program to be incomplete on March 4, 1994 because it lacked permit application forms. On March 6, 1995, the District submitted its forms and EPA deemed the program complete on March 30, 1995. On February 10, 1995, the District adopted a rule to implement title IV. EPA deemed the South Coast acid rain program acceptable on March 29, 1995 (see 60 FR 16127) and on April 11, 1995, it was submitted to EPA as part of the District's title V program. On August 11, 1995, the District amended the regulatory portion of its submittal. On September 26, 1995, EPA received from CARB, on behalf of the District, the revised Regulation XXX, revised Rule 518—Variance Procedures for Title V Facilities, and a new rule, Rule 518.1—Permit Appeal Procedures for Title V Facilities. Additional materials were received on April 24, 1996, including draft revised application forms, a demonstration of adequacy of the District's group processing provisions, and several additional rules, including the following, which are relied upon to implement the title V program: Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II, adopted August 12, 1994 (supersedes previously submitted version); Rule 301—Permit Fees, adopted October 13, 1995 (supersedes previously submitted version); and Rule 441—Research Operations, adopted May 5, 1976. In conjunction with its evaluation of the South Coast's title V operating permits program, EPA reviewed all of the rules, including Regulations XX and XIII, submitted by the District. While EPA is not specifically approving rules not directly relied upon to implement part 70 as part of the District's operating permits program, changes to these rules will be reviewed by EPA to ensure implementation of the part 70 program is not compromised. See the technical support document (TSD) for a complete listing of rules submitted by the District.

On May 6, 1996 application completeness criteria were received and on June 5, 1996 revised application forms were received. The District submitted a demonstration that shows South Coast will permit 60% of its title V sources and 80% of emissions attributable to title V sources within three years of program approval along with a sample of facility permit application on May 23, 1996. Finally, on July 29, 1996, the District submitted revised application forms and completeness criteria.

Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in South Coast's submittal. The South Coast submission now contains a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by § 70.4.

On August 29, 1996, EPA proposed interim approval of the South Coast title V operating permits program in accordance with § 70.4(d), on the basis that the program ''substantially meets'' part 70 requirements.

The analysis of the District submittal given in the August 29th action is supplemented by the discussion of public comments made on the NDFR. The analysis in the NDFR document remains unchanged and will not be repeated in this final document. The program deficiencies that were identified in the NDFR must be corrected for the South Coast to have a fully approvable program. These program deficiencies, or interim approval issues, are enumerated in II.B. of the August 29, 1996 NDFR.

B. Public Comments and Responses

The EPA received comments on the NDFR for the South Coast program from four interested parties. Many of the comments are discussed below. Comments that are not addressed in this notice are addressed in a separate ''Response to Comments'' document

contained in the docket (CA–SC–96–1–OPS).

1. Insignificant Activities

Under part 70, if an activity has been classified as ''insignificant,'' an applicant need not include it in its application, except that activities that are insignificant based upon size or production rate must be listed. In order to be considered insignificant, an activity should have relatively low emissions. Such activities may not be subject to any applicable requirement under the Act, with the exception of certain generically applicable requirements, which, by their nature, need not always be addressed in a permit on a unit specific basis. The most common of such requirements are the broadly applicable opacity standards. In addition, as specified by 70.5(c), applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement. The applicant is required to certify its compliance status with respect to any requirements that apply to insignificant activities, and the permit must contain terms and conditions that will ensure compliance with any requirements that apply to insignificant activities. The South Coast program meets these criteria, with the exception that some of the listed activities do not appear to qualify as ''insignificant.''

One commenter urged EPA to accept the submittal of Rule 219 as sufficient documentation of insignificant activities and asked that EPA not impose new requirements on the District. A second commenter disagreed that part 70 requires the District to provide supporting criteria to justify its list of insignificant activities. This commenter interprets § 70.4(b)(2) as requiring the submittal of criteria only to the extent that such criteria are available. The commenter believes that the development of criteria to justify the inclusion of each and every activity on the list submitted by the permitting authority is not required.

As noted in the proposal, EPA believes that many of the activities on the South Coast list appear to be appropriately treated as ''insignificant.'' The Agency does not anticipate that sweeping changes to the list will be necessary. However, EPA does believe that there are items on South Coast's list that could emit significant amounts of pollutants and/or could be subject to unit-specific (non-general) applicable requirements and are therefore not appropriately treated as insignificant. EPA is requiring that for full approval, South Coast must demonstrate that the activities on its list are insignificant. EPA agrees that such a demonstration would not necessarily entail the development of criteria to justify each and every activity on the list. However, EPA disagrees with the assertion that criteria need only be submitted ''where available.'' This qualifier is not in the rule. The rule simply requires the submittal of criteria to justify insignificant activities lists. EPA is interpreting this reasonably to require the submittal of criteria only where there is a question about the appropriateness of a listed activity. EPA will work with the District to identify these areas and thereby reduce the justification burden that would be imposed by a literal reading of § 70.4(b)(2).

The District must revise the list to ensure that no activity on the list emits significant amounts of pollutants or will be subject to a unit-specific requirement. In some cases, this may require removing some items from the list completely. Another option is to add emissions cutoffs or size limitations to items on the list to ensure that the listed activities emit relatively low quantities of pollutants and that the listed activities are below any applicability thresholds for non-general applicable requirements.

2. De Minimis Significant Permit Revisions

Two commenters expressed their support for the District's provisions for the de minimis significant permit revision track, which can be used to process NSPS and NESHAP modifications, establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement, providing the change does not result in emissions increases greater than 5.5 tons per year (tpy) of VOC, HAPs, or PM10; 7.3 tpy of NO_X; 11 tpy of SO_X; and 40 tpy of CO. EPA identified these provisions as interim approval issues.

Part 70 requires that title I modifications (including NSPS and NESHAP modifications), establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement be treated as significant permit revisions. (See §§ 70.7(e)(2)(I)(*3*),(*4*), and (*4*)(*A*)). As such, these changes are subject to EPA and public review. In the latter two cases, this requirement is independent of any changes in emissions. By defining ''de minimis significant permit revisions'' to include these changes, the District has excluded them from public review. EPA does not believe there is any basis for an interpretation of the regulation that would allow for the exclusion of public review of these changes.

In expressing its support for the South Coast de minimis significant permit revisions provisions, one commenter paraphrased EPA's discussion of a different aspect of the District's regulation. The commenter said ''[a]s EPA points out in the preamble, requiring full public participation procedures for modifications that result in emissions increases below the levels specified in Regulation XXX would be unworkable and would dilute attention that should be focused on more significant changes.''

Part 70 requires all title I modifications, including modifications subject to major new source review (NSR), to be processed as significant permit revisions. Under the Clean Air Act, the size of the emissions increase that triggers NSR varies with the attainment status of the area. For example, a 40 ton per year increase of VOC would trigger major NSR in a moderate ozone nonattainment area. Because the South Coast is an extreme ozone non-attainment area (the only one in the country), any increase of NO_X or VOC is subject to major NSR.

The South Coast included in its rule provisions allowing modifications that result in cumulative (over the 5 year term of the permit) emissions increases of up to 40 pounds per day (about 7.3 tons per year) of NO_X and 30 pounds per day (about 5.5 tons per year) of increases of VOC to be processed without a public comment period. EPA proposed to approve this provision of the South Coast program because it believes that requiring full participation for major NSR modifications that result in emissions increases below the District's cut-off levels would be unworkable. EPA did not receive adverse comment on this aspect of the proposal.

In paraphrasing EPA's discussion regarding major NSR, the commenter attempts to extend EPA's reasoning on the NSR question to the other ''gatekeepers'' (NSPS and NESHAP modifications, establishment of or changes to case-by-case emissions limitations, and changes to permit conditions that the source has assumed to avoid an applicable requirement) in the rule. EPA notes that, unlike the NSR major modification triggers, the other gatekeepers are implemented in the same way throughout the country. Every other permitting authority in the United States and every other title V source in the United States is subject to these

requirements. EPA finds no basis for applying a different standard to the South Coast.

3. Reporting and Periodic Monitoring

One commenter stated that where reporting requirements are not specified or are specified as less frequently than every six months, those requirements should be deemed sufficient for title V purposes. Another said that existing monitoring and reporting requirements are sufficient to assure compliance with applicable requirements. Both of these commenters stated that where District rules or permits do not impose specific monitoring requirements this was done based on a determination that monitoring was not necessary, and that no new monitoring should be imposed.

Part 70 requires the submittal of reports of required monitoring at least every six months. (See § 70.6(a)(3)(iii)(A).) This requirement is in addition to the reporting requirements in existing rules and regulations. However, where this is redundant with reports required by applicable rules and regulations, it may be possible for one report to satisfy more than one reporting requirement. In order to meet the minimum part 70 requirements, the report would have to be submitted at least every 6 months, it would have to include clear identification of deviations from permit requirements and it would have to be certified by the responsible official. If these requirements are met by existing reporting requirements, there is no need to require a facility to submit the same report twice.

The periodic monitoring requirements of part 70 are set forth at § 70.6(a)(3)(i). This provision requires that the permit contain ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. * * *'' If the applicable requirement does not require periodic monitoring, the permitting authority must add it to the title V permit. EPA has previously explained that periodic monitoring need not be added where doing so would not make an appreciable difference in the ability of the permit to assure compliance. An example of this would be where a boiler is subject to an SO2 limit and is required to fire only on natural gas. In this case, a requirement that the source keep records of fuel use would meet the source's obligation to do periodic monitoring. Another example is the case of insignificant activities subject to generally applicable SIP limits, as discussed in White Paper #2.[1]

4. Compliance Certification Language

South Coast Rule 3003(c) requires that the responsible official certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the submitted document are true, accurate, and complete. The District's application forms include the following certification language: ''* * * I have personally examined and am familiar with the statements and information submitted in this document and all of its attachments. * * * Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the following statements and information are to the best of my knowledge true, accurate and complete.''

One commenter stated that ''[i]t appears the current compliance certification language goes beyond the best efforts required by California (sic) White Paper 1.''[2] The commenter feels that it is unrealistic to expect this level of personal knowledge on the part of responsible officials at very large sources covered by title V. The commenter proposes that the following language be deleted from the first paragraph of the certification: ''and that I have personally examined, and am familiar with, the statements and information submitted in this document and all of its attachments.''

EPA's White Paper 1 addresses one narrow aspect of the compliance certification. The guidance provides that companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. Although it does not appear that the District's compliance certification language would require such reconsideration, EPA notes that nothing in EPA guidance or part 70 would constrain the District from doing so.

EPA finds the compliance certification provisions of the South Coast program to be consistent with the requirements of part 70 and EPA guidance.

5. Timing of EPA Action on District Program

Two commenters suggested that EPA defer any action to grant interim approval to the South Coast title V program. One of the commenters requested that EPA delay action until resolution of their issues is achieved. The other commenter noted that, given the District's plans to amend Regulation XXX in the near future, it may be appropriate for EPA to delay action on the South Coast title V program.

EPA has a statutory obligation to take action on title V programs within one year of the submittal of a complete title V program. The year has elapsed and part 71 is currently effective in the District. If EPA's approval of the District's program is further delayed, sources will be required to submit part 71 applications. EPA will continue to work with the District and with the regulated community to resolve implementation issues. When the District amends its part 70 program, EPA will take action on the submittal as quickly as possible.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of the operating permits program submitted by the California Air Resources Board on behalf of the South Coast Air Quality Management District on December 27, 1993 as supplemented by additional materials as referenced in II.A of this document. The areas in which the South Coast program is deficient and requires corrective action prior to full approval are set out in II.B. of the NDFR. See 61 FR 45333; August 29, 1996.

This interim approval, which may not be renewed, extends until March 29, 1999. During this interim approval period, the South Coast is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the District fails to submit a complete corrective program for full approval by September 28, 1998, EPA will start an 18-month clock for mandatory sanctions. If the South Coast then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA

[1] On March 5, 1996, EPA's Office of Air Quality Planning and Standards issued ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program.''

[2] On July 10, 1995, EPA's Office of Air Quality Planning and Standards issued ''White Paper for Streamlined Development of Part 70 Permit Applications.''

will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the South Coast's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District program by the expiration of this interim approval, EPA must promulgate, administer and enforce a Federal permits program for the South Coast upon interim approval expiration.

The scope of the part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the South Coast Air Quality Manangement District, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of South Coast's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated and that apply to sources covered by the part 70 program. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, South Coast will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between South Coast and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the South Coast Air Quality Management District's submittals and other information relied upon for the final interim approval, including public comments on the proposal from four different parties, are contained in docket number CA–SC–96–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements, Administrative practice and procedure, Air pollution control.

Dated: February 7, 1997.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (dd) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(dd) *South Coast Air Quality Management District:* submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997.

* * * * *

[FR Doc. 97–4887 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–72; Notice 2]

RIN 2127–AF75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This document terminates rulemaking under which NHTSA had asked for comments on whether the performance and installation of front and rear fog lamps should be regulated by Motor Vehicle Safety Standard No. 108. Although commenters supported a rule in principle, they pointed out the lack of an acceptable and harmonized reference upon which Federal requirements could be based. In response to these comments, the SAE has established a Fog Lamp Task Force to develop an internationally-acceptable fog lamp standard, on which a Federal standard could be based. NHTSA is terminating rulemaking so that the agency can actively participate in a cooperative effort to develop a fog lamp standard.

FOR FURTHER INFORMATION CONTACT: Rich Van Iderstine, Office of Safety Performance Standards, NHTSA, (Phone: 202–366–5275; FAX 202–366–4329).

SUPPLEMENTARY INFORMATION: On October 26, 1995, NHTSA proposed amendments to Standard No. 108, the Federal motor vehicle safety standard on lighting, which were intended to harmonize the Standard's geometric visibility requirements for signal lamps and rear side marker color with those of the United Nation's Economic Commission for Europe (ECE) (60 FR 54833). With the international harmonization of standards in mind, the agency also sought comments on whether the performance and installation of front and rear fog lamps ought to be regulated by Standard No. 108.

Twenty-four comments were received in response to the notice, 12 of which commented specifically on the issue of fog lamps. These commenters were Truck Safety Equipment Institute, Chrysler Corporation, Advocates for Highway and Auto Safety, Mercedes-Benz of North America, Porsche Cars North America, Ichikoh Industries, Groupe de Travail Bruxelles (GTB), Hella, Volvo Cars of North America, Volkswagen of America, Wisconsin Department of Transportation, and American Automobile Manufacturers Association. All supported Federal regulation of fog lamps. Some American commenters pointed out the existence of vastly differing State laws, and the benefit of simplicity that a Federal pre-emptive standard would bring. Several European commenters recommended that NHTSA adopt the provisions of ECE R48 governing fog lamps. However, others cautioned that there is no generally satisfactory industry standard nor government regulation anywhere that could form the basis of a suitable Federal motor vehicle safety standard.

Many urged that any Federal standard for fog lamps should be one that is harmonized with the standards of Japan and the ECE. Vehicle and lighting manufacturers, concerned about the lack of an acceptable standard, recommended that the Society of Automotive Engineers (SAE), in conjunction with GTB and interested participants from around the world, develop a harmonized standard that could be used by national governments. In the aftermath of these comments, in April 1996, SAE established a Fog Lamp Task Force that will undertake this effort, recognizing that its existing requirements need to be modified to adequately address all fog lamp issues.

NHTSA has decided to terminate its rulemaking on fog lamps. The agency believes that it is appropriate for it to actively participate in the cooperative effort to develop fog lamp standards. Future agency rulemaking in this area will be based on NHTSA's assessment of the success of this cooperative effort.

The agency's termination covers fog lamps only. NHTSA is continuing its analysis of the comments on geometric visibility and rear side marker lamp color.

Issued on: February 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4940 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 022197A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Aleutian Islands Subarea

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This adjustment is necessary to prevent the underharvest of pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI.

DATES: 2400 hrs, Alaska local time (A.l.t.), February 23, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received at the

following address no later than 1630, A.l.t., March 10, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allowance of the pollock total allowable catch apportioned for vessels catching pollock for processing by the offshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997) as 16,835 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowance of the pollock total allowable catch apportioned for vessels catching pollock for processing by the offshore component in the AI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,835 mt, and is setting aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI.

Current information shows the catching capacity of vessels catching pollock for processing by the offshore component is in excess of 10,400 mt per day. In accordance with § 679.23(e) and except as provided in § 679.23(e)(2)(ii), directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI is scheduled from 1200 hrs, A.l.t., January 26, 1997, through 1200 hrs, A.l.t., April 15, 1997, and from 1200 hrs, A.l.t. September 1, 1997, through 1200 hrs, A.l.t., November 1, 1997, or until the TAC is reached, whichever occurs first.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. The Regional Administrator has determined that the remaining portion of the allocation to the offshore component would be underharvested if a 1200 hrs closure were allowed to occur.

NMFS, therefore, in accordance with § 679.25(a)(1)(i), is adjusting the season for pollock by vessels catching pollock for processing by the offshore component in the AI subarea of the BSAI by closing directed fishing at 2400 hrs, A.l.t., February 23, 1997. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the offshore component in the AI of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing directed fishing at 2400 hrs, A.l.t, on February 23, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the offshore component in the AI of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the pollock allocation for vessels catching pollock for processing by the offshore component in the AI of the BSAI would be underharvested, resulting in an economic loss of more than 3 million dollars. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 10, 1997.

Classification

This action is required by § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1997.

Bruce C. Morehead,

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

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Proposed Rules

Federal Register
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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF 55

Revision of Fee Schedules; 100% Fee Recovery, FY 1997

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1997 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1997 is approximately $462.3 million.

DATES: The comment period expires March 31, 1997. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that NRC collect the FY 1997 fees by September 30, 1997, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

The agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Electronic Access.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On April 12, 1996 (61 FR 16203), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes to the fees assessed for FY 1996 were adopted by the NRC. These changes were highlighted in the final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this proposed rule.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1997 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1997, the NRC's budget authority is $476.8 million, of which $11.0 million has been appropriated from the NWF. In addition, $3.5 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site. The FY 1997 appropriation statute states that the $3.5 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately $462.3 million in FY 1997 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

The total amount to be recovered for FY 1997, and therefore the total fees, is the same as the amount estimated for recovery for FY 1996. However, the distribution of the total amount to be collected between the two types of fees is different. The NRC estimates that approximately $96 million would be recovered in FY 1997 from fees assessed under 10 CFR part 170 and other receipts compared to $120.5 million in FY 1996. The remaining $366.3 million in FY 1997 would be recovered through the 10 CFR part 171 annual fees. Because the 10 CFR part 170 fees and other offsetting receipts for FY 1997 is below the estimate for FY 1996, annual fees must increase. The lower estimate for 10 CFR part 170 fees plus other changes cause an 8.2 percent increase in FY 1997 annual fees compared to FY

1996. These changes are more fully explained in Section B. The following examples illustrate the changes in annual fees.

	FY 1996 annual fee	FY 1997 proposed annual fee
Class of Licensees:		
Power reactors	$2,746,000	$2,972,000
Nonpower reactors	52,800	57,200
High enriched uranium fuel facility	2,403,000	2,600,000
Low enriched uranium fuel facility	1,179,000	1,276,000
UF_6 conversion facility	597,800	647,000
Uranium mills	57,000	61,600
Typical materials licenses:		
Radiographers	13,000	14,000
Well loggers	7,500	8,200
Gauge users	1,600	1,700
Broad scope medical	21,700	23,500

Because the final FY 1997 fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1997 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send a bill for the amount of the annual fee upon publication of the FY 1997 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1997 final rule would be billed at the FY 1997 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes three amendments to 10 CFR part 170 and one change in practice under part 170. These amendments would not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is proposing to amend § 170.11 of the Commission's fee regulations to add an exemption provision for those amendments to materials portable gauge licenses referencing NUREG 1556 that would change only the name of the Radiation Safety Officer (RSO). This proposed change is consistent with the proposed regulatory approach outlined in draft NUREG–1556, Volume 1, entitled ''Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Portable Gauge Licenses'' issued October 3, 1996, for public comment. No amendment fees would be assessed for the amendments to portable gauge licenses because the regulatory program proposed in the final NUREG–1556, Volume 1, would include commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application, then a technical review is not required. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Second, the NRC proposes that the two professional hourly rates established in FY 1996 in § 170.20 be revised based on the FY 1997 budget. These proposed rates would be based on the FY 1997 direct FTEs and that portion of the FY 1997 budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund. These rates are used to determine the part 170 fees. The NRC is proposing to establish a rate of $131 per hour ($233,055 per direct FTE) for the reactor program. This rate would be applicable to all activities whose fees are based on full cost under § 170.21 of the fee regulations. A second rate of $125 per hour ($222,517 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate would be applicable to all materials activities whose fees are based on full cost under § 170.31 of the fee regulations. In the FY 1996 final fee rule, these rates were $128 and $120 respectively.

The two rates are based on cost center concepts adopted in FY 1995 (60 FR 32225; June 20, 1995) and used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources are assigned to cost centers to the extent they can be distinguished. These costs include all salaries and benefits, contract support, and travel that support each cost center activity.

Third, the NRC proposes to adjust the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect both the changes in the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license and amendment) for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1995. The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1997 of $125 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1995 (60 FR 32218; June 20, 1995). For new materials licenses, the proposed licensing fees for FY 1997 are increased in approximately 70 percent of the categories, while the proposed fees for materials amendments would increase in over 60 percent of the categories.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation review of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions, including any review prior to licensee submissions, between NRC and licensees. As in the past, any pre-implementation interaction should not

be fee bearing. It is noted the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54 (a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

In summary, the NRC is proposing to:

(1) Revise the two 10 CFR part 170 hourly rates;

(2) Revise the licensing (application and amendment) fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service;

(3) Add a provision to the regulations exempting from 10 CFR part 170 fees certain amendments to materials portable gauge licenses issued in accordance with NUREG–1556; and

(4) Charge under part 170 for post-implementation quality assurance plan, safeguards contingency plan and emergency plan changes

B. Amendments to 10 CFR part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes six amendments to 10 CFR part 171. First, the NRC proposes to amend § 171.13 to revise the language to indicate that if the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees on the same basis as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991. However, as a contingency the NRC believes the rule should be amended to permit NRC to meet the requirements of OBRA–90 in the case that unforeseen events prevent NRC from publishing a new rule during a fiscal year.

Second, the NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1997 to recover approximately 100 percent of the FY 1997 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. In this FY 1997 proposed rule, the NRC intends to follow the same method as used in FY 1996. Because the total amount estimated for recovery through fees in FY 1997 is identical to the amount to be recovered in FY 1996, establishing new baseline fees is not warranted for FY 1997. While the total amount collected is the same, the distribution between part 170 and 171 fees would change. In FY 1996, 26% was estimated to be collected from 10 CFR part 170 fees. This decreases to 21% in FY 1997. Therefore, to recover 100 percent of the budget, 10 CFR part 171 annual fees must increase in FY 1997 compared to FY 1996. The NRC is establishing the FY 1997 annual fees for all licensees at a level of 8.2 percent above the FY 1996 annual fees. The 8.2 percent increase results primarily from a reduction in the amount of the budget recovered for 10 CFR part 170 fees, a reduction in other offsetting adjustments, and reduction in the number of licensees paying annual fees. In addition, the NRC has made adjustments to recognize that all fees billed in a fiscal year are not collected in that year. Table I shows the total budget and amounts of fee billed and collected for FY 1996 and FY 1997.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES

[Dollars in millions]

	FY96	FY97
Total Budget	$473.3	$476.8
Less NWF	–11.0	–11.0
Less General Fund (Hanford Tanks)	.....	–3.5
Total Fee Base	462.3	462.3
Less Part 170 Fees	114.5	96.0
Less other receipts	[1] 6.0	.....
Part 171 Fee Collections Required	341.8	366.3

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1996 ANNUAL FEES—Continued

[Dollars in millions]

	FY96	FY97
Part 171 Billing Adjustments: [2]	.....	.....
Small Entity Allowance	4.9	5.0
Unpaid FY 1997 bills	.....	3.0
Payments from prior year bills	.....	2.0
Subtotal	4.9	6.0
Total Part 171 Billing	346.7	372.3

[1] $6 million in excess collections from FY 1995 were available to reduce FY 1996 annual fees.

[2] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1997.

As shown in Table I, the total amount of annual fees to be billed in FY 1997 is $25.6M ($372.3–$346.7) or 7.4 percent higher than the amount that was to be billed in annual fees in FY 1996. The NRC notes that the reduction in the estimates of 10 CFR part 170 fees for FY 1997 is primarily in the areas relating to the review of applications for reactor operating licenses and the review of standard plant applications. In addition, for the first time the estimates take into consideration an allowance for bad debt by estimating billings in the fiscal year that are not projected to be collected in that fiscal year and collections received in the current fiscal year as a result of billings from a prior fiscal year. These adjustments to the annual fees will allow the NRC to come closer to meeting its obligation to recover approximately 100 percent of its budget authority through the assessment of fees.

In addition to changes in 10 CFR part 170 fees and other adjustments, the number of licensees to pay fees in FY 1997 has decreased compared to FY 1996. This decrease in the number of licensees paying fees causes annual fees to increase by an additional 0.8 percent. For example, the Haddam Neck power reactor has ceased operations and the fuel has been permanently removed from the reactor. Therefore, the utility will pay only a partial annual fee in FY 1997. In addition, Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 NRC licenses will be transferred to Massachusetts. These licenses are projected to pay only one half of the annual fee.

Third, an annual fee is proposed in § 171.16(d), fee Category 1.E., for each certificate of compliance issued to the United States Enrichment Corporation (USEC) on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky and at Piketon, Ohio. The NRC intends to assume regulatory jurisdiction over the two plants from the U.S. Department of Energy (DOE) on March 3, 1997.

Fourth, Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of annual fees for FY 1997 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to FY 1997 annual fees. This change is being made in recognition of the fact that since the final FY 1996 rule was published in April 1996, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1996 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all such requests before the end of the fiscal year on September 30, 1996. Similar situations existed after the FY 1991–1995 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fifth, the NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licensees. The reactor provision in § 171.17(a) would be revised to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). The materials provision would be amended to recognize that licenses transferred to an Agreement State as a result of a new Agreement are effectively terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective.

Sixth, § 171.19 would be amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1997 either toward their total annual fee to be assessed or to make refunds, if necessary. This section would also be amended to modify the annual fee billing schedule for materials licenses terminated and new materials licenses issued during the fiscal year.

The NRC will send a bill to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1997 final rule. For these licensees, payment will be due on the effective date of FY 1997 rule. Those materials licensees whose license anniversary date during FY 1997 falls before the effective date of the final FY 1997 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1997 rule would be billed, at the FY 1997 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

The proposed amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The proposed changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996–1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

III. Section-by-Section Analysis

The following analysis of those sections that would be amended by this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section would be amended to add a new paragraph indicating that amendments to materials portable gauge licenses issued in accordance with NUREG 1556 that change only the name of the Radiation Safety Officer (RSO) would be exempt from amendment fees. This change is consistent with the recent Business Process Redesign (BPR) initiative and NUREG–1556, Volume 1, issued for public comment October 3, 1996 (61 FR 51729). No amendment fees would be assessed for the amendments issued in accordance with NUREG 1556 to portable gauge licenses because the regulatory program would include commitments from the licensee concerning RSO qualifications and if those commitments are included in the amendment application then there would be no technical review conducted by the NRC. The NRC expects NUREG 1556 to be finalized before the final fee rule becomes effective. If not, then this proposed change will not be included in the final fee regulation.

Section 170.20 Average Cost per Professional Staff-Hour

This section would be amended to establish two professional staff-hour rates based on FY 1997 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1997 for all activities whose fees are based on full cost under § 170.21 would be $131 per hour, or $233,055 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 would be $125 per hour, or $222,517 per direct FTE. The rates are based on the FY 1997 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1997 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Salary and Benefits	$155.3	$48.4
Allocated Agency Management and Support	42.5	13.2
Subtotal	197.8	61.6
General and Administrative Support (G&A):		
Program Travel and Other Support	9.6	2.5
Allocated Agency Management and Support	72.1	22.4
Subtotal	81.7	24.9
Less offsetting receipts	.1	
Total Budget Included in Hourly Rate	279.4	86.5
Program Direct FTEs	1,196.9	388.7
Rate per Direct FTE	233,055	222,517
Professional Hourly Rate	131	125

Dividing the $279.4 million budget for the reactor program by the number of reactor program direct FTEs (1196.9) results in a rate for the reactor program of $233,055 per FTE for FY 1997. Dividing the $86.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (388.7) results in a rate of $222,517 per FTE for FY 1997. The Direct FTE Hourly Rate for the reactor program would be $131 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($233,055) by the number of productive hours in one year (1776 hours) as indicated in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' The Direct FTE Hourly Rate for the materials program would be $125 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($222,517) by the number of productive hours in one year (1776 hours). The FY 1997 rate is slightly higher than the FY 1996 rate due in part to the Federal pay raise given to all Federal employees in January 1996.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1997 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1997 hourly rate for the reactor program, as shown in § 170.20. The fees in § 170.21 for the review of import and export licensing, facility Category K, would be adjusted for FY 1997 to reflect both the increase in the hourly rate and the revised average professional staff hours needed to process certain types of licensing actions.

For those applications currently on file and pending completion, footnote 2 of § 170.21 would be revised to provide that professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file that are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1997 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application (''flat'' fees) would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license and amendment) and the increase in the professional hourly rate from $120 per hour in FY 1996 to $125 per hour in FY 1997.

As previously indicated, the CFO Act requires that the NRC conduct a biennial review of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses and amendments). The full cost license and inspection fees (e.g., for fuel cycle facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of $125 per hour for FY 1997. The review indicated that the NRC needed to

modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1995 (60 FR 32218; June 20, 1995). Thus the revised hours used to determine the proposed fees for FY 1997 reflect the changes in the licensing program that have occurred since that time. For new licenses, the proposed fees for FY 1997 are increased in approximately 70 percent of the fee categories, while the proposed fees for amendments have increased in over 60 percent of the fee categories.

The ''flat'' fees in § 170.31 for the review of import and export licensing applications have increased from FY 1996 as a result of the increase in the hourly rate and the results of the biennial review. The proposed licensing ''flat'' fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule would be subject to the fees in this proposed rule.

The amounts of the materials licensing ''flat'' fees were rounded off so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees that are greater than $1,000 but are less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000. Fees under $1,000 are rounded to the nearest $10.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of $125, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

In addition to the above rule changes, the NRC is clarifying how it would recover the costs of post-implementation reviews of changes licensees make without prior NRC review; for example, changes under §§ 50.54, 50.59 and 70.32. The NRC is announcing here that licensees would be billed for post-implementation reviews of these changes under §§ 170.21 and 170.31, beginning with the effective date of the FY 1997 final fee rule. There will be no change in how fees are assessed for any pre-implementation interactions including any review prior to licensee submissions, between the NRC and licensees. As in the past, any pre-implementation interaction will not be fee-bearing. It is noted that the NRC plans to inform reactor licensees in the near future that their submittals under § 50.54(a), (p) and (q) should not ask for pre-implementation reviews; instead, licensees are required to perform their analyses, implement their changes (if the analyses show that the changes do not degrade plans the NRC has already approved), and make their submittals under the relevant subsection of § 50.54. The NRC will then verify that the changes are in compliance with § 50.54.

Part 171

Section 171.13 Notice

The language in this section would be revised to indicate that in the unlikely event the NRC is unable to publish a fee rule with an effective date within the current fiscal year, then the NRC would continue to assess fees at the same rates as the previous fiscal year. The NRC believes that it will be able to publish an effective fee rule within a current fiscal year as it has done since FY 1991 when 100 percent fee recovery was initiated. However, the possibility exists that the NRC might be unable to establish fees for a current fiscal year through the notice and comment process. Therefore, as a contingency plan for meeting the requirement of OBRA–90, the NRC is proposing to amend § 171.13 to indicate that if the NRC is unable to promulgate a final fee rule within a current fiscal year, then fees would continue to be assessed at the same rates as the previous fiscal year. The NRC will continue to work diligently to publish the fee rules at the earliest possible time during the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised as described below. Paragraphs (a), (b), (c) (1), (c)(2), (e), and (f) would be revised to comply with the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget for FY 1997.

Paragraph (b) would be revised in its entirety to establish the FY 1997 annual fee for operating power reactors and to change fiscal year references from FY 1996 to FY 1997. The fees would be established by increasing FY 1996 annual fees (prior to rounding) by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as in the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

With respect to Big Rock Point, a smaller, older reactor, the NRC proposes to grant a partial exemption from the FY 1997 annual fees similar to FY 1996 based on a request filed with the NRC in accordance with § 171.11.

Each operating power reactor, except Big Rock Point, would pay an annual fee of $2,972,000 in FY 1997.

Paragraph (e) would be revised to show the amount of the FY 1997 annual fee for nonpower (test and research) reactors. In FY 1997, the proposed fee of $57,200 is 8.2 percent above the FY 1996 level. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

Paragraph (f) would be revised to change fiscal year date references.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million pay a maximum fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on the budget but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

Section 171.16(d) would be revised to establish the FY 1997 annual fees for materials licensees, including

Government agencies, licensed by the NRC. These fees were determined by increasing the FY 1996 annual fees (prior to rounding) by 8.2 percent.

In addition, an annual fee is proposed in § 171.16(d), fee Category 1.E., for each Certificate of Compliance issued to the USEC on November 26, 1996, to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. The NRC announced its intent to issue the compliance certificates to USEC on September 19, 1996 (61 FR 49360). The NRC intends to assume regulatory jurisdiction over the two plants from DOE on March 3, 1997. Because the two plants have been certified in FY 1997, the NRC is proposing to establish an annual fee of $2,600,000 for each of these two facilities. The NRC methodology for determining annual fees for major fuel facilities was explained in the FY 1995 final fee rule published in the Federal Register on June 20, 1995 (60 FR 32234). As indicated in the Federal Register, the methodology can be applied to determine annual fees for new licenses or certificates. The NRC has applied the methodology to the USEC facilities and has concluded that the relative weighted safety and safeguards factors for these facilities is similar to a high enriched uranium facility. Therefore, the NRC is proposing to establish the annual fee for each USEC uranium enrichment facility at $2,600,000, the same as that for a high enrichment facility (fee category 1.A.(1)(a)). Because the certifications would be in effect for the last six months of FY 1997, the NRC would assess one-half of the annual fee or $1,300,000 to USEC for each certificate for the last half of FY 1997.

The amount or range of the FY 1997 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$2,600,000.
Part 70—Low enriched fuel facility.	1,276,000.
Part 40—UF_6 conversion facility.	647,000.
Part 40—Uranium recovery facilities.	22,300 to 61,600.
Part 30—Byproduct Material Licenses.	490 to 23,5001.[1]
Part 71—Transportion of Radioactive Material.	1,000 to 78,700.

MATERIALS LICENSES ANNUAL FEE RANGES—Continued

Category of license	Annual fees
Part 72—Independent Storage of Spent Nuclear Fuel.	282,000.

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $420,000.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. All other licensees and approval holders who held a license or approval on October 1, 1996, are subject to the FY 1997 annual fees.

Section 171.17 Proration

The NRC is proposing to amend the proration provisions in § 171.17 for reactor and materials licenses. Paragraph (a) would be amended to reflect the changes in 10 CFR part 50 relating to the decommissioning of power reactors which became effective August 28, 1996 (61 FR 39278). Reactor annual fees would be prorated based on the requirements of § 50.82(a)(2) that upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR Part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. Previously the proration of reactor annual fees was based on the date of issuance of the possession only license (POL).

Paragraph (b) would be amended to recognize that materials licenses transferred to a new Agreement State are considered terminated by the NRC for annual fee purposes, on the date that the Agreement with the State becomes effective. The State of Massachusetts is expected to become an Agreement State in FY 1997 and approximately 425 licenses will be transferred to the State on the effective date of the Agreement. The NRC would assess the annual fees for those licenses being transferred to the State of Massachusetts using the current proration provisions of § 171.17(b) whereby the licenses would be considered terminated on the effective date of the Agreement with Massachusetts.

New licenses issued during FY 1997 would receive a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1997, will not be assessed an annual fee for FY 1997. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees will be subject to the annual fee in effect on the anniversary date of the license. Affected licensees who are not sure of the anniversary date of their materials license should check the original issue date of the license.

Section 171.19 Payment

Paragraph (b) would be revised to give credit for partial payments made by certain licensees in FY 1997 toward their FY 1997 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1997 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly bill to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) would be revised to update fiscal year references. Paragraph (d) would be revised to modify the billing schedule for terminated materials licenses and new materials licenses. Licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

As in FY 1996, the NRC would continue to bill annual fees for most

materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This proposed rule applies to those materials licenses in the following fee categories: 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1997 before the effective date of the FY 1997 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1996 rate in FY 1997. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1997 final rule would be billed, at the FY 1997 revised rates, during their anniversary month of their license and payment would be due on the date of the invoice.

During the past six years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Electronic Access

Comments on the proposed rule may be submitted through the Internet by addressing electronic mail to INTERNET:SECY@NRC.GOV. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. This proposed rulemaking is available for review and comment on the BBS. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via the Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, and dialing the toll free number 1–800–303–9672.

Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FEDWORLD consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FEDWORLD Online User's Guides'' particularly helpful.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has the option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the ''Rules Menu.'' Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC ''Rules Menu.''

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–5780; e-mail AXD3@nrc.gov.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for

special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1997 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1997 budget of $476.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington site.

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1997. The proposed rule results in an increase in the annual fees charged to all licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1997.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(11) Materials portable gauge licenses issued in accordance with NUREG–1556 that are amended to change only the name of the Radiation Safety Officer. This exemption does not apply to those materials portable gauge licenses that

also authorize possession and use of nuclear materials for other activities.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$131 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	125 per hour.

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[see footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—new license	$8,100
Amendment	$8,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a) (1)–(8):	
Application—new license	$5,000
Amendment	$5,000
3. Application for export of components requiring foreign government assurances only:	
Application—new license	$2,900
Amendment	$2,900
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application—new license	$1,300
Amendment	$1,300
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
Amendment	$190

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

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5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$580.
Amendment	$390.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$780.
Amendment	$300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1)	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$130.
Amendment	$290.
C. All other source material licenses:	
Application—New license	$3,700.
Amendment	$580.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$3,900.
Amendment	$550.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,600.
Amendment	$580.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D	
Application—New license	$7,100.
Amendment	$650.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4)	
Application—New license	$2,000.
Amendment	$440.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,100.
Amendment	$390.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application—New license	$2,000.
Amendment	$450.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application—New license	$4,700.
Amendment	$760.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,800.
Amendment	$1,000.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,500.
Amendment	$1,100.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,800.
Amendment	$310.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,000.
Amendment	$350.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$5,600.
Amendment	$780.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,900.
Amendment	$640.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$2,100.
Amendment	$510.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$4,400.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$750.
Amendment	$350.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment.	
Full Cost Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,600.
Amendment	$540.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,300.
Amendment	$230.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,600.
Amendment	$850.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$6,600.
Amendment	$1,000.
7. Medical licenses:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,600.
Amendment	$400.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,900.
Amendment	$740.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,800.
Amendment	$460.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$590.
Amendment	$410.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$610.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$2,200.
Amendment—each device	$1,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$940.
Amendment—each source	$630.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$480.
Amendment—each source	$160.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$350.
Amendment	$640.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$8,100.
Amendment	$8,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,000.
Amendment	$5,000.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$190.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20	
Application (initial filing of Form 241)	$1,100.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by the prescribed application fee of $125,000.

(b) *License/approval/review fees.* Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees.* Applications subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees.*

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows.

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1997 and 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees would be assessed based on the rates in effect for the previous fiscal year.

8. In § 171.15, paragraphs (a), (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§ 171.15 Annual fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11 (a)(1) and (a)(2).

(b) The FY 1997 uniform annual fee for each operating power reactor which must be collected by September 30, 1997, is $2,972,000. This fee has been determined by adjusting the FY 1996 annual fee upward by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 1997 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter,

except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor.....$57,200
Test reactor.....$57,200

(f) For FY 1997 and FY 1998, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1997 as follows:

Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts)	Maximum annual fee per licensed category
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1997, the maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1997 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1997 annual fees, which must be collected by September 30, 1997, have been determined by adjusting upward the FY 1996 annual fees by 8.2 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$2,600,000
Nuclear Fuel Services SNM–124	2,600,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,276,000
General Electric Company SNM–1097	1,276,000
Siemens Nuclear Power SNM–1227	1,276,000
Westinghouse Electric Company SNM–1107	1,276,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities	
(a) Facilities with limited operations:	
B&W Fuel Company SNM–1168	508,000
(b) All Others:	
General Electric SNM–960	345,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	282,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses or certificates for the operation of a uranium enrichment facility	2,600,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	647,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	61,600
Class II facilities [4]	34,800
Other facilities [4]	22,300
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	45,200

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	8,000
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,600
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,600
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	11,200
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73 and 32.74 to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,600
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,900
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,800
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,300
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 102,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,200
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,700
7. Medical licenses:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	23,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs	
Users and Fabricators	78,700
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	282,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	420,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,166,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,961,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1996, and permanently ceased licensed activities entirely by September 30, 1996. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FY 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the FY 1995 surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(3) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

10. In § 171.17, introductory text, paragraphs (a), (b) introductory text, and (b)(1) are revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) *Reactors.* The annual fee for reactors (power and nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full fee is due and payable each subsequent fiscal year. Licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect.

(b) *Materials licenses (including fuel cycle licenses).* (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

* * * * *

11. In § 171.19, paragraphs (b), (c), and (d) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FYs 1997 and FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

(c) For FYs 1997 and 1998, annual fees in the amount of $100,000 or more and described in the Federal Register notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FYs 1997 and 1998, annual fees of less than $100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than $100,000 are billed on the anniversary of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Beginning June 11, 1996, the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 19th day of February, 1997.

For the Nuclear Regulatory Commission.

Ronald M. Scroggins,

Acting Chief Financial Officer.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980, as amended, (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with

applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied a receipts-based size standard of $5 million to this class of licensees. This mirrored the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995 and FY 1996 fee rules and proposes to continue their use in this FY 1997 proposed rule. The small entity fee categories in § 171.16(c) of this proposed rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at $1,800 and a lower-tier small entity fee of $400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 was raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC believes that continuing these actions for FY 1997 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately $445.3 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million; for FY 1995 about $503.6 million; for FY 1996 about $462.3 million and the amount to be collected in FY 1997 is approximately $462.3 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) in FY 1994 (59 FR 36895; July 20, 1994) in FY 1995 (60 FR 32218; June 20, 1995) and in FY 1996 (61 FR 16203) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991–1996.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is proposing to establish the FY 1997 annual fees for all licensees at 8.2 percent above the FY 1996 annual fees. Because the total amount to be recovered through fees in FY 1997 is identical to the amount estimated for recovery in FY 1996, the NRC believes that establishing new baseline fees for FY 1997 is not warranted.

Public Law 104–121, the Contract with America Advancement Act of 1996 was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a ''major'' rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1997.

II. Impact on Small Entities

The comments received on the proposed FY 1991–1996 fee rule revisions and the small entity certifications received in response to the final FY 1991–1996 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991–1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a ''Mom and Pop'' type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of

the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past five years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these ''Mom and Pop'' type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993); in the FY 1994 rule (59 FR 36895; July 20, 1994); in the FY 1995 rule (60 FR 32218; June 20, 1995) and in the FY 1996 rule (61 FR 16203; April 12, 1996). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991–1996 evaluations of these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1997, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1997, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1997, the NRC concludes that the 10 CFR part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR part 171 maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1997 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing, for FY 1997, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992–1996, the NRC is proposing to continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the Federal Register on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined the 10 CFR part 171 annual fees significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the proposed fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1996 rules remain valid for this proposed rule for FY 1997. In compliance with Public Law 104–121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1997

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Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final action as defined by the Act. The NRC's fee rule published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees meets the thresholds for being considered ''major'' under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1997. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1997 annual fees assessed under 10 CFR part 171. Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, PO Box 954514, St. Louis, MO 63195–4514.

The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC effective May 11, 1995. The small entity size standards are found in 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small entity fees. These fees are found in 10 CFR 171.16(c) of the fee regulations.

NRC Definition of Small Entity

The NRC has defined small entity in consultation with the Small Business Administration. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, small entities are:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

The NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee bill, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee. Approximately 900 licensees pay the small entity fee of $1,800 while 500 licensees pay the lower-tier small entity fee of $400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license are to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees may pay the reduced fee, which for a full year is either $1,800 or $400, for each fee category shown on the invoice depending on the size of the entity. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies resulting in a fee of (either $900 or $200) for each fee category billed instead of the full annual fee of $1,800 or $400.

4. A new small entity form is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed form, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195–4514.

5. Questions regarding fee bills may be posed orally or in writing. Please call the licensing fee staff at 301–415–7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

[FR Doc. 97–4704 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–97; Notice 2]

RIN 2127–AF40

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the test procedures in Standard No. 216, *Roof Crush Resistance,* to make them more suitable to testing vehicles with highly sloped roofs or raised roofs. The current test procedure is intended to test the strength of the roof over the driver. It involves lowering a large test plate, inclined forward at a five degree angle, to an initial contact point near the leading edge of the roof. However, when the procedure is performed on certain rounded, aerodynamically-shaped roofs that may themselves slope at more than five degrees, small differences in test plate angle result in considerable variability in the location of the initial contact point, thus reducing the repeatability of the test results. Similarly, for vehicles with raised, irregularly shaped roofs (such as some converted vans), the initial contact point may not be above the driver, but on the raised rear portion of the roof, behind the driver.

This proposal addresses these problems by specifying the use of a smaller test plate for use on vehicles on which the use of the current larger test plate would result in an initial contact point behind the driver. The rearward edge of the smaller test plate will be

over the front occupant compartment, so the initial contact point will be in that area.

This proposal also changes the test procedure to align either test plate with the front of the roof, thus ensuring engagement of the vehicle's A-pillar.

DATES: *Comment Date:* Comments must be received by April 28, 1997.

If adopted, the proposed amendments would become effective, and compliance required, 180 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: The following persons by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590:

For non-legal issues:

Dr. William R. S. Fan, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329, electronic mail ''bfan@nhtsa.dot.gov''.

For legal issues:

Mr. Paul Atelsek, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''patelsek@nhtsa.dot.gov''.

Comments on this proposal must be sent to the docket and not to the contact persons.

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 216, *Roof Crush Resistance,* is intended to assure that vehicles have sufficient structural strength in the passenger compartment roof to resist crushing during rollover crashes. The test procedure involves securing the vehicle on a rigid horizontal surface, placing a test plate on the roof, and applying 1.5 times the unloaded vehicle weight (up to a maximum of 22,240 N, or 5,000 pounds, for passenger cars) to the test plate. The vehicle passes if the roof prevents the test plate from moving downward more than 127 mm (5 inches).

The test procedure is designed to test the primary structural member supporting the roof over the front seats. That member is generally the A-pillar.

In order to test the A-pillar, the test plate, which is 762 mm (30 inches) wide by 1,829 mm (72 inches) long, is oriented in a way so that the initial contact point is at the top of the A-pillar. Its 1,829 mm dimension is parallel to the vertical plane through the longitudinal centerline of the vehicle, and tilted forward at a five degree angle. Its 762 mm dimension is tilted outward at a 25 degree angle so that its outboard side is lower than its inboard side. So oriented, the test plate is lowered until it contacts the vehicle. After the initial contact point is determined, the test plate is moved, maintaining its orientation, so that the initial contact point touches the underside of the test plate along the test plate's longitudinal centerline, 254 mm (10 inches) rearward of the centerline's forwardmost point. The test plate is then pushed downward in a direction perpendicular to its lower surface until a load of 1.5 times the unloaded vehicle weight (up to a maximum of 22,240 N, or 5,000 pounds, for a passenger car) has been applied.

Although, as noted above, the intent underlying this test procedure is to load the area at the top of the A-pillar, the combined effect of the test plate and procedures and certain roof configurations may be the testing of other areas of the roof. Neither NHTSA nor the industry envisioned these configurations when the current test procedure was promulgated. In response to the problems created by these configurations, two members of the industry have petitioned the agency to modify the test procedure.

II. Petitions

A. Recreation Vehicle Industry Association (RVIA)

RVIA, which represents small business van conversion manufacturers, is concerned that contoured or raised roof structures on certain second stage van conversions cannot be tested using the current test procedure. With only a five degree incline of the test plate, the initial contact point at the leading edge of the roof is supposed to be 254 mm (10 inches) behind the forwardmost edge of the test plate. However, for some raised roofs, the initial contact point will be several inches behind the leading edge of the roof due to the roof geometry. This results in testing the raised roof structure (which is generally relatively weak) instead of the A-pillar over the front seats. Vehicles with these problem configurations include raised roof conversions of the Plymouth Voyager, Dodge Caravan, Chrysler Town & Country, Chevrolet Astro, and GMC Safari minivans.

To address this situation, RVIA petitioned NHTSA to allow vans, motor homes and other multipurpose passenger vehicles, trucks, and buses that have raised roofs, to be tested in accordance with the test procedures in Standard No. 220, *School Bus Rollover Protection.* Standard No. 220 uses a larger test plate and distributes the same load evenly over the entire surface of the roof and all its supporting pillars, rather than concentrating the load on either side of the roof over the front seat.

In making this request, RVIA reasoned that, since the modified vehicles would have met Standard No. 216 requirements prior to modification of their roofs, the A-Pillar strength would have been demonstrated. The Standard No. 220 test procedure could then be used to test the strength of the entire modified vehicle roof. There would be no need to repeat the Standard No. 216 test.

B. Ford Petition

Ford is concerned that some Ford models with aerodynamic, rounded, roof designs result in initial contact points that are so far back on the roof that the front edge of the test plate is several inches behind the A-pillar when it is positioned as specified in the Standard. This occurs because the roofs slope longitudinally at an angle greater

than 5 degrees at their leading edge. Consequently, the roofs are loaded somewhere behind the A-pillar.

In addition, Ford states that the long sloping roofs make repeatable testing difficult. The initial contact point is highly variable and dependent on the specific roof design. The initial contact point can move several inches if the plate angle or the level of the floor on which the test vehicle is placed are off by as little as one degree. This could lead to substantial differences in test results.

Ford believes that the test procedures are contradictory. S6.2 of the standard says to ''[o]rient the test device as shown in Figure 1 * * *'', which shows the test plate in contact with the front corner of the roof, inclined longitudinally at an angle of 5 degrees. At the same time, S6.2(d) of the rule specifies that the initial contact point be 254 mm (10 inches) from the front edge of the test plate. Thus, there is a conflict between the specifications in S6.2(d) and Figure 1 in the regulatory text for certain vehicles with highly sloped roofs.

Ford believes NHTSA has not resolved this apparent conflict in a way that is in accordance with the initial intent underlying the standard, which is to load the front corner of the roof. NHTSA issued an October 3, 1980 letter of interpretation stating that the test plate should be positioned in accordance with the language of the regulatory text of S6.2(b), even if the leading edge of the test plate will not be forward of the A-pillar and the roof's leading edge, as depicted in the figure. Ford has followed this interpretation even though it believes that this approach does not test the actual resistance of the roof to being crushed in crashes.

Ford petitioned NHTSA to amend Standard No. 216 to specify that the leading edge of the test plate should always be one inch forward of the leading edge of the roof. To accomplish this, Ford suggested the following language to replace S6.2(d):

> The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the device. A plane perpendicular to the lower surface of the test device and 25 mm rearward of the front edge of the lower surface passes through the rearmost point of the opening in the body structure for the windshield.

Ford also petitioned NHTSA to amend the test procedure to specify that all vehicles be tested with the body sills, rather than the chassis, mounted on the rigid surface, and that all roof rack components that could interfere with initial contact between the test plate and the roof be removed prior to testing.

III. Agency Request for Comments

In a request for comments published December 27, 1994, NHTSA granted the RVIA and Ford petitions, but expressed reservations about the solutions suggested by the petitioners. The details of NHTSA's reaction to the petitions can be seen in that 1994 document (59 FR 66504), and will merely be summarized here.

In response to the RVIA's petition to use the test procedures of Standard No. 220 for raised roof vehicles, NHTSA expressed concern that adopting RVIA's approach would trade off increased roof crush protection for rear seat occupants with diminished protection for front seat occupants. Because most deaths and injuries in these vehicles are to front seat occupants, and RVIA submitted no data to quantify the trade-offs in protection, NHTSA wanted to conduct research to examine them. In addition, NHTSA was concerned that the roof strength in the area of the A-pillars might be affected by raised roof conversions, thus compromising the basis for the original manufacturer's certification under Standard No. 216.

In response to Ford's petition to position the leading edge of the test plate one inch forward of the leading edge of the roof, NHTSA observed that consistent positioning of the test plate over the front of the roof would not ensure that area of the roof would be tested. This would occur because Ford's suggested language retained the 5 degree angle of tilt (a detailed explanation is given below). In addition, NHTSA was concerned that Ford's suggested positioning could reduce the stringency of the test for some vehicles.

The agency requested public comment on the changes requested in the petitions. Specifically, NHTSA requested relevant test data, and recommendations for other ways to address aerodynamically sloped and raised roofs, including changes in the orientation, size, and shape of the test plate.

IV. Comments on the Petitions

A total of 11 comments were received by the agency in response to the notice. Five passenger vehicle manufacturers (Ford, General Motors, Mercedes-Benz, Volkswagen, and Volvo), a second-stage manufacturer (S & S Coach Company), two trade associations (American Automobile Manufacturers Association (AAMA) and RVIA), a group of concerned citizens, and two safety organizations (Advocates for Highway and Auto Safety (Advocates) and MCR/LRI Inc. Liability Research Group (MCR/LRI Inc.)) submitted comments. These comments are summarized below, grouped according to the similarity of their positions on the issues.

A. Comments on the RVIA Petition and the Suitability of Standard No. 220 Test Procedures for Raised Roof Vehicles

1. Passenger Vehicle Manufacturers and AAMA

Ford did not support or oppose the RVIA recommendation, but it did comment on the appropriateness of Standard No. 216 and 220 test procedures for testing the raised roofs of conversion vans. Ford stated that Standard No. 220 may be more practicable for the low volume roof modifications addressed by RVIA. In addition, Ford expressed concern that van converters who supply vehicles for drivers and passengers with disabilities may not be able to certify compliance with Standard No. 216. According to Ford, the simplified test for school buses in Standard No. 220 may make certification more practicable for those converters.

Some commenters suggested that, rather than adopt a separate test procedure for raised roof vehicles, the agency could modify the Standard No. 216 test procedure to make it more suitable for these vehicles. Ford suggested increasing the allowable deflection to reflect the added space between the raised roof and occupants in vehicles with raised roofs. Volkswagen agreed that raised roof vehicles should be tested using Standard No. 216 rather than Standard No. 220. It also suggested three different methods for modifying the procedures to accommodate raised roof vehicles: (1) test with the raised roof removed and the test plate applied to the supporting structure, (2) exclude the measured roof crush of the raised roof from the 127 mm (5 inch) displacement, and (3) measure the 127 mm (5 inch) displacement into the passenger compartment starting from where the test plate reaches the inner roof.

2. Second Stage Manufacturers and RVIA

RVIA commented that several states require Standard No. 220-type testing to certify ambulance conversions purchased and licensed by their states. They enclosed a November 1, 1994 document from the General Services Administration (Federal Specifications for Ambulances, KKK–A–1822D) specifying this test for use by all Federal agencies when procuring ambulances.

In response to the agency's request for data to show that RVIA's suggested amendment would not reduce the stringency of the test, and that A-pillar strength is retained after the roof is cut out during a conversion, RVIA commented that they were in the midst of conducting new tests and would submit their results to the docket. The agency has not yet received any data from RVIA, but will consider these data if and when they become available.

S&S Coach Company, a final stage manufacturer of funeral coaches, submitted a petition for consideration to exclude from Standard No 216 funeral coaches having a gross vehicle weight rating (GVWR) of 2,722 kilograms (6000 pounds) or less. They stated that the current test procedure makes it impossible to test the front edge of the roof. They believe that these vehicles have very little risk of rollover because they are produced in small numbers, are primarily in urban use, and operate at slow speeds.

3. Safety Advocacy Groups

MCR/LRI Inc. stated that the petitioners should provide data to show the maximum force experienced by the roof in realistic, injury-producing rollovers in their vehicles. In addition, before any amendment is made in the current requirements of Standard No. 216, MCR/LRI Inc. said that RVIA should provide data to show that the suggested amendment does not degrade the rollover safety of their vehicles.

Advocates stated that the NHTSA should reject RVIA's request for exclusion from the test requirements of Standard No. 216. Advocates agrees with NHTSA's concerns that compliance before the roof is cut out does not necessarily mean that the original roof would still comply after modification, and that the Standard No. 220 procedures do not assure frontal compartment protection.

Advocates urged NHTSA to require raised roof vehicles to meet the Standard No. 220 requirements, in addition to those of Standard No. 216, because raised roof vehicles can carry a full complement of passengers in the front and rear compartments, necessitating protection for both areas.

B. Comments on the Ford Petition, and Test Plate Orientation and Size

1. Passenger Vehicle Manufacturers and AAMA

Ford buttressed its petition by presenting test results from three test facilities with which they contracted to test four 1994 Ford Taurus sedans using the current Standard No. 216 test procedure. The plate placement was highly variable, resulting in different roof strength measurements for each Taurus tested at the different test facilities. Data on the variability of plate placement were submitted to the docket and Ford stated that it would submit its test results after analyzing the data.

GM, Volvo, and Mercedes-Benz generally supported the amendment suggested by Ford to the Standard No. 216 procedure, while Volkswagen remained neutral. Although Ford's test procedure does not provide for the consistent placement of the plate and the same contact point, GM believed that in most cases, the test plate would contact the front portion of the roof prior to reaching 127 mm (5 inches) of crush. In addition, GM stated that Ford's suggested test plate positioning would eliminate an ''edge condition,'' which can result in concentrated loading over a small area of the roof.

There was some disagreement among the manufacturers over whether NHTSA should consider changing test plate angles, although they all agreed that data would be needed to support such a change. GM suggested that, if NHTSA's test procedure is intended to simulate loading in rollover crashes, the agency should consider changes in the plate angles to accommodate the range of vehicle designs. GM supports a NHTSA study of the appropriateness of the current test plate angles.

Ford opposed changing the test plate size, shape, or angle. Ford stated that crash data should be used to verify that any new angles are more representative of real-world rollover crashes. Ford also stated that the current test plate size adequately represents the ground surface contact area in rollover accidents, and reducing that size would probably require strengthening of long roofs, due to the more concentrated loading.

Mercedes-Benz also opposed test plate angle changes. Assuming that NHTSA might propose higher plate angles, Mercedes-Benz stated that changing the direction of the loading might make the test more stringent, necessitating a redesign of the roof pillars to respond to the more horizontal loading.

Although it is not directly relevant to its petition, Ford also believes some methods used by test facilities to tie-down vehicles pre-stress the pillars and the roof and reduce the measured roof strength. As more data become available, Ford plans to direct the agency's attention to further changes needed in the Standard No. 216 test procedure.

AAMA also supported the Ford suggestion, but suggested a slight change in the language of Ford's suggested amendment. It thought that some persons might misinterpret Ford's phrase ''opening in the body structure for the windshield'' to mean the edge of the depression in the metal roof panels into which the edge of the windshield is mounted. Ford confirmed to the AAMA that it intended to refer to the edge of the metal roof panels and windshield, AAMA suggested the following language for the test procedure in Standard 216 for S6.2(d):

> The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the device. A line normal to the lower surface of the test device and through a point on its longitudinal centerline and 25 mm rearward of the front edge passes through the rear edge of the visible exterior surface of the windshield.

Volkswagen neither supported nor opposed the amendment suggested by Ford, because it had experienced no difficulty with the procedures. However, it urged that any amendment of Standard No. 216 be flexible and not limited in its suitability to test different vehicle roof configurations.

Ford and the AAMA both urged adoption of the Ford suggestion in order to achieve harmonization between Standard No. 216 and Transport Canada's CMVSS No. 216.

Five consumers commented that the Ford suggestion would provide better protection for all passengers and drivers.

2. Safety Advocacy Groups

MCR/LRI Inc. stated that the petitioners should submit data to show that the force on the roof in their amendment is realistic and that there would not be a degradation in the rollover safety of new vehicles if the Ford recommendation were accepted.

MCR/LRI Inc. also stated that minor amendments to Standard No. 216 are unlikely to achieve an adequate level of roof crush protection. Their analysis of 50 rollover accident cases showed that the roof was substantially distorted in all cases. They concluded that the head and neck injuries almost certainly occurred inside the vehicle as a consequence of roof crush. MCR/LRI stated that the current Standard No. 216 test improperly takes advantage of the strength imparted by the windshield, because in virtually all rollovers, the windshield fails, resulting in a 75 percent drop in roof strength.

Instead, MCR/LRI urged NHTSA to require the Standard No. 208, *Occupant crash protection*, rollover test with specific head and neck injury criteria,

and maximum levels of roof intrusion. It suggested compliance be demonstrated by a drop test or optionally using head and neck injury criteria in a drop test.

Like MCR/LRI, Advocates thought that the modifications to the current Standard No. 216 test procedure would not be sufficient. It agreed that a modified angle and smaller test plate may result in a more stringent test, but it was not certain that any manipulation of the test plate angles would generate the desired result because of the radical slope of a number of current roof designs. Advocates also stated that there are no data to indicate what forces an A-pillar should withstand, and in which direction it should withstand them, in real-world crashes.

Advocates considered the Standard No. 216 test to be outdated and inadequate. It was concerned that the proposed modifications will be in lieu of a dynamic roof strength test that it believes the agency should adopt. In a dynamic rollover test, Advocates asserted that required roof loads should be much higher than the 1.5 times unloaded vehicle weight now used in the static test, because rollover crashes are known to involve much higher loads. Advocates was also concerned that there are no criteria governing permissible injury levels associated with the test requirements in either Standards 216 or 220.

Although it was not directly related to the petitions, Advocates opposed the exclusion of vehicles between 2,722 and 4,536 kilograms (6,000 and 10,000 pounds) GVWR from the purview of this rule. Advocates commented that this group includes small school buses, which carry many young passengers. Advocates stated that excluding these vehicles is not a responsible stance for an agency charged with protecting and enhancing public safety in passenger vehicles.

V. NHTSA Research on the Proposed Test Procedure

A. Passenger Cars

Based on the comments to the notice, the agency decided to test two passenger cars using the current Standard No. 216 test procedure, and a modified test procedure based on the Ford recommendation. Because the Ford Taurus was one of the vehicles mentioned in Ford's petition, it was chosen as one of the vehicles to be tested by the agency.

The other passenger car tested was the Dodge Neon. The Dodge Neon had the highest roof slope among approximately 30 passenger cars surveyed by the agency. NHTSA concluded that if a revised test procedure is suitable for a contoured roof such as that in the Dodge Neon, and if it is at least as stringent as the current test procedure, then that test would be suitable for all passenger vehicles that are currently being produced.

Both the left and right sides of each vehicle's roof were tested. Standard No 216 only requires testing one side of the roof per vehicle, so there is a slight possibility that the deformation caused by the first test affected the results of the second test. However, the amount of roof crush and the area contacted by the test plate were so small that NHTSA judged that the integrity of the roof structure on the other side of the vehicle was not altered by the first test. NHTSA requests comment on this judgment.

The left side was tested using the current Standard No. 216 test plate placement procedure and the right side was tested using a modified test plate positioning procedure that moved the plate forward until the plate's front edge was vertically flush with the forwardmost point of the exterior roof including trim of the windshield (Figure 1 of the proposed rule). This is a slight modification to the Ford suggested procedure in that the test plate is not positioned relative to the rearmost windshield opening, but rather to the forwardmost point of the exterior roof including trim.

Although NHTSA used a test plate placement procedure slightly different from the one Ford suggested, the agency believes that its procedure still addresses Ford's concerns relating to consistent placement of the test plate for repeatability and concentrated loading when the plate leading edge is behind the leading edge of the roof. Placement of the test plate leading edge at the forwardmost point of the roof prevents the leading edge of the plate from being placed several inches rearward of the A-pillars, where it would penetrate into the roof. Under Ford's suggested test plate placement procedure, the leading edge of the plate may penetrate the roof if a line connecting the rearmost points on either side of the windshield edge of the roof is more than 25 mm (1 inch) behind the forwardmost point on the roof, which is usually located at the longitudinal centerline of the vehicle.

The force-deflection curves generated by the current and modified test plate placement procedures for the Ford Taurus and Dodge Neon are available in the docket. For the Ford Taurus, up to approximately 10 mm (0.4 inches) of roof crush, the force does not build up when using the current Standard No. 216 test procedure. After this point, the slope of the traces (which correlates with roof stiffness) under the two procedures are about the same. Once 40 mm (1.57 inches) of crush is reached, the modified and current test procedures produce almost identical force-deflection results. Total roof deflection was about 54 mm (2.1 inches) under both the procedures, at 22,240 N (5,000 pounds) of applied plate load.

The results from the Dodge Neon roof crush tests showed almost identical force-deflection characteristics in the current and modified test procedures up to 46 mm (1.8 inches) of crush. At 46 mm (1.8 inches), the currently prescribed test procedure reached 1.5 times the unloaded vehicle weight of the tested vehicle. Under the modified test procedure, the load requirement was reached after about 54 mm (2.1 inches), indicating a 17 percent increase in the roof crush. The required load limits were reached within the specified roof deflection limits (127 mm, or 5 inches) for both vehicles, under both the current and modified test procedures.

Roof crush results from the Taurus and Neon vehicles indicate that the modified procedure could be adopted by the agency without any appreciable reduction in test stringency. NHTSA concludes that the 17 percent extra crush under the modified test procedure on the Dodge Neon is not appreciable because it represents a displacement of only 8 mm (0.3 inches), but requests comment on this assessment. The modified test procedure would alleviate the ambiguous language in current Standard No. 216, and it would position the test plate more consistently.

B. Raised Roof Converted Van Tests

To compare the stringency of the Standard Nos. 216 and 220 roof crush procedures when applied to raised roof vehicles, the agency tested a 1992 Chevy Astro Van with a raised roof in accordance with the modified Standard No. 216 test procedure, and compared the test results with the test results of an altered 1994 GMC Safari van tested in accordance with Standard No. 220 test procedures. The agency obtained the Safari Van test data from a test report produced by General Testing Laboratories, Inc., for Mark III Industries. Although the two vehicles were not identical, they are both ''L/M'' class vans produced by GM and the raised roofs in each were very similar in style. The roofs were cut out behind the B-pillar. This, according to a RVIA representative, is the predominant method used by alterers in converting vans to recreational vehicles. This method is preferred because the roof bows are not removed at the B-pillar,

thus helping to retain the roof support over the front occupant compartment.

For purposes of the modified test, the roof over the front occupant compartment was defined as the roof area between a transverse vertical plane passing through a point 162 mm (6.4 inches) rearward of the seating reference point (SgRP) of the driver seat and a transverse vertical plane passing through the forwardmost point on the roof including trim. NHTSA requests comment on the appropriateness of this definition.

The data from the 1994 GMC Safari van showed the force and deflection of the roof at an applied load 1.5 times the unloaded vehicle weight in a Standard No. 220 type test (the test report is available in the docket). The test plate covered the entire roof and was controlled by 4 hydraulic rams, one at each corner. The initially horizontal plate was lowered until the plate contacted the roof at two points. A load was applied. When 1.5 times the unloaded vehicle weight was reached, the maximum deflection was 51 mm (2 inches) at the left front corner of the test plate. Standard No. 220 specifies a maximum deflection of 130 mm (5.12 inches).

The agency conducted its own test using a modified Standard No. 216 test procedure and recorded the force-deflection characteristics on a 1992 Chevy Astro van with a raised roof very similar to the 1994 Safari van tested using the Standard No. 220 procedure. The test report for the test conducted by NHTSA is also available in the docket. The test plate was oriented in the same manner as in passenger car tests using the modified test procedure (forward edge of the plate flush with the forwardmost exterior roof point along the longitudinal centerline of the vehicle). The test plate loaded the roof initially at the highest point on the raised roof, which was behind the B-pillar and above the original roof by about 178 mm (7 inches). Roof crush was continued for approximately 533 mm (21 inches) of crush, recording the force-deflection characteristics over that entire distance.

The force-deflection trace from the modified Standard No. 216 test (available in the docket) shows that 1.5 times the unloaded vehicle weight was reached after 51 mm (2 inches) of roof crush at the initial point of contact. After an additional 51 mm of roof crush, the roof was loaded through other contact points forward of the initial point of contact. The crushing of the roof continued until the plate contacted another point on the roof over the front occupant compartment. This trace shows the force vs. displacement curve for the entire crushing sequence of the roof. After a total crush of approximately 173 mm (6.8 inches), the plate reached the original roof structure prior to conversion, and the load at that point was 35,000 N (7,870 pounds). The force peaked at 45,000 N (10,120 pounds) when the total roof crush was about 211 mm (8.3 inches), and then force level dropped to about 42,000 N (9,450 pounds) as the roof was crushed to 285 mm (11.2 inches).

The results of the Standard No. 216 and Standard No. 220 tests were then compared to determine whether the Standard No. 220 test was as stringent as the Standard No. 216 procedure and tested the appropriate areas of the roof for proper crush strength. Both vehicles reached 1.5 times the unloaded vehicle weight at approximately 51 mm (2 inches) roof crush.

The raised roof reached a higher test load (30,700 N, or 6,900 pounds, compared to 26,700 N, or 6,000 pounds) with less crush of the roof during the Standard No. 220 type test mainly because of the difference in the area of contact between the roof and the test plate in the two test procedures. The test plate load in the Standard No. 220 test procedure was distributed over a larger roof area and thus enlisted more support pillars in developing the load. Moreover, the test did not preferentially crush the roof over the front occupant compartment.

Therefore, the Standard No. 220 test procedure appears to be slightly less stringent than the procedure in Standard No. 216. A similar raised roof developed a higher load under the Standard No. 220 procedure than under the Standard No. 216 procedure. Therefore, because the load requirements are essentially the same under the two test procedures, a roof would more easily sustain load and pass the test under the Standard No. 220 procedure. The Standard No. 220 test also does not test the integrity of the front roof structure as well as Standard No. 216, which concentrates on the roof over the front seat occupants.

VI. Agency Response to the Comments

A. Issues Related to the RVIA Petition

The agency does not consider the Standard No. 220 test easier to administer than the Standard No 216 test, as posited by Ford. Moreover, the total cost for a Standard No. 220 test is slightly higher than that for a Standard No. 216 test. Therefore, the agency disagrees with Ford's rationale for using the Standard No. 220 test procedure.

The agency has examined the applicability of the Standard No. 220 test procedure for roof crush resistance of raised roof vehicles. Standard No. 220 and 216 test results were compared to determine the applicability of a 220-type test. Results reveal that a 220-type test will be less stringent when compared to the Standard No. 216 test when the test plate is positioned to apply the load over the front occupant compartment.

Volkswagen's and Ford's suggestion for excluding the crushing of the raised roof portion from the 127 mm (5 inch) limitation in the standard was investigated by the agency, as detailed in the van tests above. NHTSA concluded that, if the plate is placed over the front occupant compartment and A-pillar, where roof integrity is most important, the proposed test criteria could be considered as stringent (in terms of providing the same level of occupant safety) as the current test criteria. Therefore, the agency tentatively agrees with Ford and Volkswagen that allowable roof crush for added-on roofs under Standard No. 216 could be increased to reflect the added space between the original roof and the raised roof.

Unfortunately, NHTSA can see no practical way to determine the pre-alteration position of the original roof. The original roof is no longer present, so no measurements can be made between it and the added-on roof. In addition, the original roof may have compound curves, making the precise determination of its former location relative to the initial contact point on the added-on roof difficult. Although NHTSA is not proposing to modify the test procedure to account for it at this time, the agency specifically requests comment on possible methods for taking this increased head room into account. If the commenters suggest a suitable method, NHTSA may include such a modification in the final rule. NHTSA also requests comment on how or whether the test procedure should address the tinted glass panels, or sunroofs that some vehicles have over the front occupant compartment.

The agency disagrees with S&S Coach Company that funeral coaches should be excluded from normal Standard No. 216-type testing. The agency believes that these vehicles are driven at a normal range of speeds most of the time and could be exposed to the risk of rollover, just as other passenger vehicles on the highway. Since some of these vehicles have raised roofs, they would be subject to the amended test procedure used for raised roof vans. However, the load requirements would

be the same as for unmodified vehicles, whether passenger cars, multi-purpose passenger vehicles, trucks, or buses.

Although the agency would welcome data on roof loads experienced by vehicles in ''realistic, injury-producing rollovers'', which MCR/LRI suggested was necessary, NHTSA is not aware of any such data. NHTSA believes that such data would be difficult if not impossible to generate because, due to the inherent complexity of rollovers and injury causation, it is difficult to determine precisely the role of roof crush in causing head/neck injury.

B. Issues Related to the Ford Petition

Regarding Ford and the AAMA's request that NHTSA consider harmonization of the roof crush standard, NHTSA does not believe that is an appropriate step at this time. There is no UN/ECE equivalent with which NHTSA can harmonize. Further, the Canadian CMVSS No. 216's reference to ''the left front or the right front portion of the vehicle's roof structure'' is not sufficiently specific to meet the objectivity requirements that apply to all FMVSSs. It would also not provide the repeatability that Ford desires.

NHTSA already tests with roof racks removed, as Ford suggested in its petition. In a September 21, 1992 interpretation letter, NHTSA stated that the agency would conduct its compliance testing for Standard No. 216 with roof-mounted accessories such as roof racks removed, because the purpose of the test is to measure the strength of the roof, not the strength of roof mounted accessories. Further, conducting the test with roof mounted accessories in place could influence the positioning of the test device. Although this issue has been addressed by interpretation, NHTSA is adding a sentence to the regulatory text to make it explicit in the CFR.

GM urged that the agency conduct a study to determine the appropriateness of the current test plate angles. Preliminary studies have been conducted by the agency with an alternative plate angle of zero degrees with respect to the longitudinal axis and fifteen degrees with respect to the lateral axis of the plate. However, these studies do not provide a sufficient basis for modifying the plate angle or size requirements in the test procedures.

The agency welcomes any data Ford submits on pre-stressing of the A-pillar and roof due to the tie-down method used in Standard No. 216. However, since Ford is not sure that the tie-down method is a problem and no other manufacturer has brought the matter to the agency's attention, the agency will not pursue this matter until Ford submits more data. NHTSA notes that modification of the tie-down method, if necessary, can probably be addressed by a change in the compliance test procedure and would not require an amendment to the standard.

Regarding Mercedes-Benz's contention that the plate angles should not change, the agency agrees that a test with a higher plate angle would be more stringent because it would stress the A-pillar in a more lateral direction. However, without changing the plate angles or size, the initial contact point will not change. If the initial contact point is too far behind the A-pillar, the load will be transferred primarily through the B-pillar, instead of the A-pillar, and thus not test roof strength in the area over the front occupant compartment. Nevertheless, the agency is taking the conservative approach of not proposing changes in test plate angles at this time because it prefers to accumulate more data on the effect of different plate angles. Until these data are developed by or supplied to the agency, the agency will defer proposing modifications of the load limits and plate angles and sizes. NHTSA requests any available data on this subject.

NHTSA agrees with Volkswagen's suggestion that any amendment of Standard No. 216 be flexible and applicable to different vehicle roof configurations. It is always the intent of the agency to develop test procedures for its rules that are uniformly applicable to all vehicles, irrespective of their design configuration.

NHTSA agrees with MCR/LRI Inc. that there should be some data showing that the Ford recommendation does not reduce the stringency of the regulatory requirements. In order to assure that the stringency of the standard is maintained, the agency conducted comparison tests using the current test procedure and the proposed test procedure.

Like MCR/LRI, the agency is concerned about rollover safety and head and neck injuries resulting from roof crush. However, NHTSA questions whether the head/neck injuries in MCR/LRI's case study of 50 rollover crashes are solely caused by excessive roof crush. Correlation of roof distortion with injury is not sufficient evidence to conclude that reduced roof intrusion alone would have prevented head/neck injuries.

The agency disagrees with MCR/LRI's contention that the current Standard No. 216 test improperly takes advantage of the strength imparted by the windshield. NHTSA recognizes that the windshield is, for engineering purposes, an integral part of the structures that manufacturers use to strengthen the roof. In view of this, the windshield should not be separated from the roof greenhouse structure during a roof crush test. While the windshields failed in the very severe rollover crashes selected by MCR/LRI, resulting in diminished roof crush resistance, the agency does not agree that the test procedure should reflect these unusually severe rollover crashes. All of the crashes that MCI/LRI selected resulted in serious to fatal head or neck injuries, while less than five percent of non-ejected occupants in all rollover crashes receive such injuries. The windshield probably contributes to roof crush resistance in more representative, less severe, rollover crashes, and the strength it imparts should be counted in the consistent minimum level of roof strength that the standard ensures.

The agency agrees with Advocates and MCR/LRI that it has not found sufficient data to propose a different plate angle and size for all vehicles at present. However, Standard No. 216's compliance test data show that roof contact area is generally very small, especially for late model year vehicles. The table ''FMVSS 216 Data Compilation'' in the docket shows that in most cases less than 100 square inches of roof are crushed. In view of this, a smaller test plate would be sufficient for roof crush testing of a majority of production vehicles. NHTSA requests comment on this issue, and specifically on the size of the small test plate.

The agency is not planning an upgrade of Standard No. 216 to a dynamic test at this time. Instead, this rulemaking is only amending Standard No. 216 test procedure to the extent necessary to remove the ambiguity of test plate placement for testing and the controversy of testing raised roof vehicles, while maintaining the stringency of the current test requirement. NHTSA would welcome any submissions of data supporting an upgrade of Standard No. 216 to include a dynamic test procedure and/or to include a rollover injury criteria. However, the agency is not planning to make them a part of this rulemaking.

NHTSA disagrees with Advocates that there is any gap in its safety standards concerning rollover safety for school buses. Standard No. 220's roof crush requirements apply to *all* school buses, even those between 2,722 and 4,536 kilograms (6,000 and 10,000 pounds). Therefore, these vehicles, by virtue of their intended purpose, are covered by the appropriate roof crush requirements. Further, the agency is also not

convinced that the safety problem due to roof crush in vehicles which have a GVWR rating above 2,722 kilograms (6,000 pounds) necessitates any change in Standard No. 216 at this time.

VII. Proposed Test Procedure and Requirements

A. Description of Proposal

NHTSA is proposing to modify the test plate size and placement to fulfill the original intent underlying Standard No. 216, and reduce test variability. A summary of the proposed changes to the requirements and test procedures follows:

(1) For all vehicles without raised roof structures, the requirements and test procedures would remain the same, except that the initial placement of the leading edge of the test plate would be flush with the forwardmost edge of the roof. This change would ensure engagement of the A-pillars.

(2) For vehicles with a raised or altered roof, the test plate size might vary depending upon the position of the raised roof relative to the front occupant compartment. The current large test plate would be placed in position with its lower surface touching the initial contact point. If the initial contact point is on any portion of raised or altered roof rearward of the front occupant compartment, then a small test plate (610 mm by 610 mm, or 24 inches by 24 inches) is used for testing instead. Because the 5 degree plate angle is so low, initial contact of a large test plate with the raised roof to the rear of the front occupant compartment would be most likely to occur on vehicles whose raised or altered roof is completely located to the rear of the front occupant compartment. The performance requirement would be the same as when testing with the large test plate. The small test plate would have to reach a load of 1.5 times the unloaded vehicle weight within 127 mm (5 inches) of displacement.

A small test plate is needed in this particular situation to assure that the roof over the front occupant compartment in the area of the A-pillars is tested. Otherwise, the large plate might test only the roof to the rear of the front occupant compartment. In addition, NHTSA wants to make sure that the roof modification process does not significantly affect the original strength of the front roof structure. Therefore, it would be appropriate to use a smaller test plate to evaluate only the front roof strength for vehicles (mostly van conversions) where the roof to the rear of the front occupant compartment may have been compromised during the conversion. Conversely, it would be appropriate to test a raised roof which is located, in part, over the front occupant compartment, even if some raised roof to the rear were also subsequently crushed.

The size of the smaller plate must be large enough so that the plate edges do not penetrate the roof. Based on its measurement of nine late model year minivans, NHTSA believes that a test plate of 610 mm by 610 mm (24 inches by 24 inches) would be sufficient. In nearly all the tests, a much smaller area than the size of the proposed small plate was crushed (see Table ''FMVSS 216 Data Compilation,'' in the docket). However, the agency is not proposing to use a smaller plate for all tests because it does not have sufficient data to determine the appropriateness of a smaller test plate for all roof crush tests. NHTSA requests comment on whether the proposed plate size is appropriate.

B. Explanation of NHTSA's Selection of the Proposed Test Procedure and Requirements

Because the agency's testing indicates that the Standard No. 220 test procedure is less stringent than the modified Standard No. 216 test procedure, NHTSA did not adopt RVIA's recommendation to use it. Nevertheless, NHTSA believes that using the modified Standard No. 216 test procedure for testing conversion vans and other such vehicles would address RVIA's and Ford's concerns. The use of the modified procedure also accommodates the belief expressed by the safety groups that the roof strength should not be degraded when part of the roof is cut out and replaced by a raised roof.

Ford's main concern is the variability in the initial contact point inherent in existing test procedures in Standard No. 216. Because of the five degree angle of the larger plate, some vehicles with aerodynamic roof designs could have an initial contact point with the test plate rearward of the A-pillar area, even though the original intent underlying the standard was to test the roof area in the vicinity of the joint of the A-pillar and front header and side rail components.

This concern would be partly addressed by the modified Standard No. 216 procedure. By consistently placing the forward edge of the test plate flush with the forwardmost edge of the roof, the leading edge of the plate would not penetrate into the softer parts of the roof, but would be aligned with the supports for the front occupant compartment. This should assure engagement of the A-pillar in most cases. On some vehicles with highly curved roofs, the initial contact point could still be behind and inboard of the A-pillar area, but at least the plate will contact the A-pillar area after the roof has been depressed a short distance.

However, by itself, realigning the plate would not be sufficient to address RVIA's concern and ensure engagement of the appropriate area on all raised roof vehicles. This is because a raised roof may be so high that the A-pillar area would never be engaged before the permissible plate travel is reached. Therefore, NHTSA is proposing to adopt a smaller test plate (610 mm by 610 mm, or 24 inches by 24 inches) for use with vehicles which have altered/raised roof structures located rearward of the front passenger compartment that would make initial contact with the current test plate. This would assure that, for most vehicles, the test plate would contact the front roof only. The choice of test plate is based on whether initial contact is with the roof over the front occupant compartment.

VIII. Changes to the Regulatory Text

Substantial changes to the regulatory text are being proposed, although the substance of the regulation remains largely the same. To accommodate the insertion of a definitions paragraph (customarily located at the beginning of NHTSA's standards), all subsequent paragraphs, i.e., those beginning with S4, would need to be renumbered. S4 (former ''requirements'') would become S5. S5 (former ''test device'') would become S6. S6 (former ''test procedure'') and all of its subparagraphs would become S7 and subparagraphs. The definitions paragraph would be designated S4. By better segregating the requirements and the test procedures between S5 and S7, it is possible to eliminate the redundant statement of parallel test procedures under the former S6.3. Figure 1 would be revised to reflect the new plate positioning procedure.

In addition, a number of clarifying minor changes were made to the regulatory text. A sentence was added to the test procedures to explicitly specify that non-structural components such as roof racks would be removed prior to testing. This was already the agency's interpretation of the current test procedure.

IX. Proposed Lead Time

The proposed amendments to Standard No. 216 are not likely to impose any additional costs on vehicle manufacturers and converters, although NHTSA requests comments on this issue. The amended test procedures

provide for repeatable testing that follows the original intent of the standard. For most vehicles, the test would be essentially the same as it is now. Even for those vehicles for which use of a smaller test plate would be specified, the same or similar equipment is used for testing.

The agency is not proposing the five year lead time requested by Ford. This action is being taken at Ford's request and, to the extent that test plate placement differs from the current procedures, it should make compliance with the standard easier for all vehicles, since engagement of the A-pillars is assured.

Consequently, the amended rule would become effective, and compliance would be required, on 180 days following the publication of the final rule. However, manufacturers may voluntarily comply with this rule earlier.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''non-significant'' under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not impose any new requirements but simply clarify existing test procedures and allow them to be applied consistently to the intended area of the roof on all vehicles. Therefore, the impacts of the proposed amendments would be so minor that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, the rule would not impose any new requirements but would instead clarify the test procedures and allow them to be applied to the areas of the roof to which they were originally intended. It would not have any effect on the price of new vehicles purchased by small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XI. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (See 49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. See 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.216 would be amended as follows:

a. S4 is revised.

b. S5 is revised.

c. S6 is revised, and S6.1, S6.2, 6.3 and S6.4 are removed.

d. S7, S7.1, S7.2, S7.3, and S7.4 are added.

e. Figure 1 at the end of the section is revised.

The additions and revisions would read as follows:

§ 571.216 Standard No. 216; roof crush resistance

* * * * *

S4. *Definitions.*

Altered roof means a roof that has had all or part of the original roof removed and replaced by a roof that is higher than the original roof.

Raised roof means, with respect to a roof which includes an area that protrudes above the surrounding exterior roof surface, that protruding area of roof.

Roof over the front occupant compartment means the roof area between a transverse vertical plane passing through a point 162 mm rearward of the SgRP of the designated

left front outboard seating position and a transverse vertical plane passing through the forwardmost point on the exterior surface of the roof, including trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S5. *Requirements.*

(a) *Passenger Cars.* Passenger cars shall meet the requirements of this paragraph. When the larger test device, described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8 or 22,240 Newtons, whichever produces the lower force, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the test device shall not move more than 127 millimeters, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(b) *Multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kilograms or less that do not have raised or altered roofs.* Multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kilograms or less that do not have raised or altered roofs shall meet the requirements of this paragraph. When the larger test device, described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof in accordance with the procedures of S7, the test device shall not move more than 127 mm, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(c) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less that have raised roofs or altered roofs.*

(1) Multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms or less having raised roofs or altered roofs shall meet the requirements of this paragraph. When the larger test device (or the smaller test device, when specified by paragraph (c)(2)), described in S6, is used to apply a force in Newtons equal to 1.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8, to either side of the forward edge of a vehicle's roof, in accordance with the procedures of S7, the device shall not move more than 127 millimeters, measured in accordance with S7.4. Both the left and right front portions of the vehicle's roof structure shall be capable of meeting the requirements, but a particular vehicle need not meet further requirements after being tested at one location.

(2) For vehicles on which the initial contact point of the larger test device, when oriented as specified in paragraph S7.2, is with the raised roof to the rear of the front occupant compartment, the smaller test device described in S6 is used for testing instead of the larger test device.

S6. *Test device.* The larger test device is a rigid unyielding block with its lower surface formed as a flat rectangle 762 millimeters by 1,829 millimeters. The smaller test device is a rigid unyielding block with its lower surface formed as a flat square 610 millimeters by 610 millimeters.

S7. *Test procedure.* Each vehicle shall be capable of meeting the requirements of S5 when tested in accordance with the following procedure.

S7.1 Place the sills or the chassis frame of the vehicle on a rigid horizontal surface, fix the vehicle rigidly in position, close all windows, close and lock all doors, and secure any convertible top or removable roof structure in place over the passenger compartment. Remove roof racks or other non-structural components.

S7.2 Orient the test device as shown in Figure 1, so that—

(a) Its longitudinal axis is at a forward angle (in side view) of 5° below the horizontal, and parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its transverse axis is at an outboard angle, in the front view projection, of 25° below the horizontal (note: if using the smaller test device, the longitudinal and transverse axes will be of the same length);

(c) Its lower surface is tangent to the surface of the vehicle;

(d) The initial contact point, or center of the initial contact area, is on the longitudinal centerline of the lower surface of the test device; and

(e) The midpoint of the forward edge of the lower surface of the test device is tangent to the transverse vertical plane passing through the forwardmost point on the exterior surface of the roof, including trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S7.3 Apply force so that the test device moves in a downward direction perpendicular to the lower surface of the test device at a rate of not more than 13 millimeters per second until reaching the force level specified in S5. Complete the test within 120 seconds. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S7.2(a) through S7.2(b).

S7.4 Measure the distance that the test device moved, i.e., the distance between the original location of the lower surface of the test device and its location as the force level specified in S5 is reached.

BILLING CODE 4910–59–P

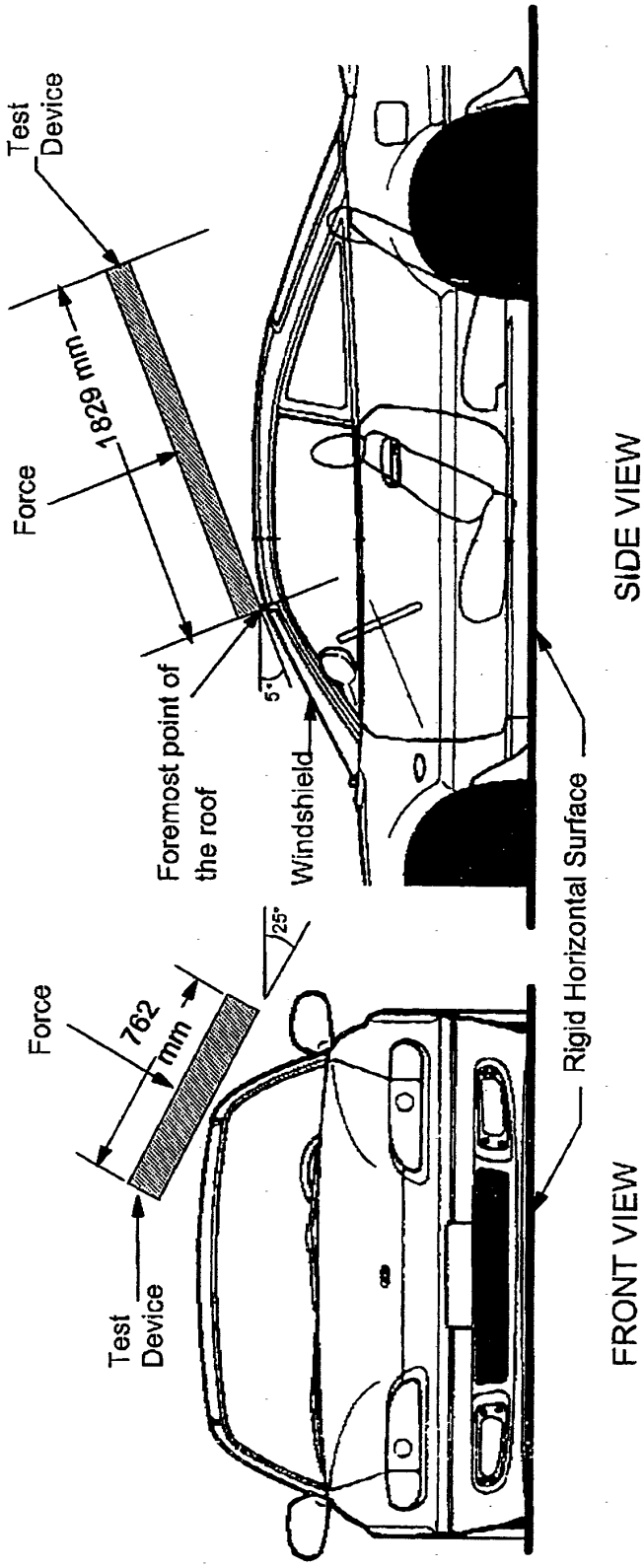

FIGURE 1. Test Device Location and Application to the Roof

Issued on: February 21, 1997.

James Hackney,

Director, Office of Crashworthiness Standards.

[FR Doc. 97–4762 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–59–C

49 CFR Part 571

[Docket No. 74–14; Notice 113]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This document solicits public comments on a petition from U. S. Senator Dirk Kempthorne to amend the provisions in the agency's automatic occupant protection standard concerning the use of unbelted as well as belted dummies in testing air bag-equipped vehicles. The petition asks that the agency impose a moratorium on testing with unbelted dummies. The petition was submitted in response to the deaths of young children and of drivers, primarily short-statured women, as a result of air bag deployments in low speed crashes. The petitioner believes that the necessity of meeting the unbelted test requirement is adversely affecting current air bag designs and causing these deaths. The petitioner also believes that the requirement is preventing vehicle manufacturers from optimizing air bag designs for belted occupants.

The agency has concluded that section 2508 of the Intermodal Surface Transportation Efficiency Act of 1991 precludes it from eliminating the unbelted test requirement.

However, since the agency is interested in all potential solutions to the air bag deaths and since the agency can recommend legislative changes to Congress, the agency is seeking public comment on the benefits and disbenefits of eliminating the unbelted test.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

For information about air bags and related rulemakings: Visit the NHTSA web site at ''http://www.nhtsa.dot.gov'' and select 11AIR BAGS: Information about air bags.''

For non-legal issues: Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Introduction

Air bags have been installed in millions of cars and light trucks. As of the end of model year 1996, driver air bags had been installed in over 56,000,000 vehicles and passenger air bags in over 27,000,000 vehicles. As of the end of calendar year 1996, air bags had saved the lives of over 1,700 occupants, almost two-thirds of them unbelted. However, they had also caused the deaths of 35 young children and 20 adults,[1] primarily in low speed crashes in which the other occupants of the vehicles involved in the crashes have either not been injured or received only minor injuries. All but one of the adults were drivers and a majority of them were short-statured women.

The reports of air bag-related deaths and injuries contrast sharply with the expectations for air bags. The Department's initial interest in air bags arose in the late 1960's as researchers observed that air bags offered a means of increasing crash protection for unbelted occupants. Despite vigorous efforts to promote the use of the safety belts that Federal regulation had recently required in all passenger cars, the rate of safety belt use was hovering around 10 percent. With such a low level of use, the safety belt was providing very little of its expected benefits. Beginning in 1969, under Secretary John Volpe, the Department explored the potential of air bags and other measures, such as crash padding and automatic safety belts, that needed no occupant action. A series of rulemaking actions followed, all of them focussing on ways to provide automatic protection. The air bag was always a leading candidate to provide this protection, but it was not specifically required during the regulatory actions of the 1970's and 1980's.

The current occupant protection requirements trace back to 1984, when Secretary Elizabeth Dole issued performance requirements for automatic restraints (i.e., automatic belts or air bags). In a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection (49 CFR 571.208), the Department required that the front outboard designated seating positions in passenger cars be equipped with automatic occupant protection (i.e., either automatic belts or air bags) instead of (or in addition to) manual lap and shoulder belts. (49 Fed. Reg. 28962; July 17, 1984).[2] For vehicles equipped with air bags, the Standard specifies two crash tests for determining whether the vehicles comply with the standard's injury criteria. Both tests involve crashing a vehicle into a barrier at speeds up to 30 mph. One crash uses unbelted anthropomorphic test dummies, while the other uses belted dummies. The unbelted crash test ensures that the vehicle provides effective ''automatic protection,'' i.e., protection that meets injury criteria ''by means that require no action by vehicle occupants,'' in keeping with the standard's original goal of providing protection to unbelted occupants.

In order to satisfy the injury criteria in a 30 mph unbelted test, an air bag must deploy very quickly. Even so, the automatic protection requirements do not specify a particular level of force. The amount of force is a function of a number of factors and air bag design features; it is also affected by the extent to which an air bag is designed to exceed the Standard's performance requirements. Further, the Standard affords substantial flexibility about how air bags perform in circumstances other than those specified in the test procedure, such as low-speed crashes and crashes with out-of-position occupants.

In the 1984 decision, the Department expressly recognized that commenters had raised issues about potential risks associated with air bags, but noted that there were technological means available for addressing those risks. The Final Regulatory Impact Analysis (FRIA) identified a variety of possible technological solutions to those risks, including dual level inflation systems of several types and measures such as changes in the shape and size of the bag, in aspiration, and in inflation techniques.

The development of air bags after the 1984 decision on automatic protection occurred at the same time as a significant increase in safety belt use. From a very low 14 percent in 1984, safety belt use increased rapidly in the late 1980's, reaching 59 percent by 1991,

[1] The figure of 20 is based on information that NHTSA has developed through NHTSA's Special Crash Investigation program and is not a census. Studies of Fatal Accident Reporting System (FARS) data are underway to obtain a more precise figure.

[2] In 1987, the agency issued a final rule extending the automatic occupant protection requirements to light trucks (i.e., vans, pickup trucks and sport utility vehicles). (52 Fed. Reg. 44898; November 23, 1987)

and stands at 68 percent[3] today according to State-reported surveys.[4]

The primary reason for the rapid increase in the rate of safety belt use in the late 1980's was the enactment of State safety belt use laws. No State had a safety belt use law in effect at the time of the 1984 decision. The number rose quickly thereafter as a result of the concerted efforts of a large number of groups including State and federal safety authorities, consumer groups, motor vehicle manufacturers, and the insurance industry. The number of States with safety belt use laws in effect rose to 8 by the end of 1985, 22 by the end of 1986 and 28 by the end of 1987. All of the dozen most populous States had laws in effect by the end of 1988[5]. Forty-nine States now have belt use laws.[6]

The decisive move toward air bags occurred in 1991, as safety belt use was approaching 60 percent. The vehicle manufacturers had begun installing driver air bags in large numbers by model year 1990 and were discussing plans for fleetwide installation of air bags, including passenger air bags, within a few years. It appeared that air bags had won out over automatic belts as a means of providing automatic protection. Accordingly, in Section 2508(a)(1) of the Intermodal Transportation Efficiency Act of 1991 (ISTEA), codified at 49 U.S.C. § 30127(b), Congress directed NHTSA to amend Standard No. 208 to provide that the ''automatic occupant protection'' in passenger cars and light trucks shall be ''an inflatable restraint,'' (i.e., an air bag). ISTEA mandated that air bags be installed in 95 percent of passenger cars in model year 1997 and in 100 percent of cars in model year 1998 and thereafter. For light trucks, it mandated installation of air bags in 80 percent of model year 1998 vehicles and 100 percent of model year 1999 and later vehicles.

ISTEA did not change the compliance tests for air bags. Section 2508(a)(1) specified inflatable restraints ''complying with the occupant protection requirements under section 4.1.2.1 of such Standard.'' At the time ISTEA was adopted, section S4.1.2.1 of FMVSS No. 208 required vehicles covered by that section to comply with subsections (a), (b), and either (c)(1) or (c)(2). (Virtually all auto manufacturers have chosen to certify their vehicles under subsection (c)(2), rather than (c)(1)). Section S4.1.2.1(a) provided that at each front outboard designated seating position, a vehicle must meet certain frontal crash protection requirements ''by means that require no action by vehicle occupants.'' In other words, compliance was required to be demonstrated in an unbelted test. Section S4.1.2.1(c)(2) provided that the vehicle must meet these frontal crash protection requirements through the use of manual seat belts provided with the vehicle ''in addition to the means that require no action by the vehicle occupant.''

Agency Actions To Eliminate Air Bag Deaths

Reports of fatal injuries to young children and drivers in low speed crashes led the agency to make an extensive effort to obtain and analyze the data necessary to understand the source of the problem and to evaluate potential solutions. Since these data were not otherwise available from industry or any other outside source, the agency conducted its own series of tests to address these issues.

On November 22, 1996, NHTSA announced its comprehensive strategy for addressing the problems of air bag deaths. In addition to public information and education efforts, and recommendations to the States to adopt more effective safety belt use laws, the agency outlined an array of rulemaking actions it would take shortly. Pursuant to that announcement, the agency subsequently took the actions described below.

To address the safety of vehicles already on the road, the agency proposed to authorize motor vehicle dealers and repair businesses to deactivate air bags upon the request of vehicle owners who were informed of the pros and cons of such deactivation. (62 FR 831; January 6, 1997) The same proposal would also apply to vehicles produced during the next several model years. This proposal is intended to address the problems of families who need to have young children in the front seat for medical monitoring purposes, as well as other persons who could be harmed by a functioning air bag. The agency strongly believes that children and other vulnerable persons should not be put at risk. The air bag technology currently chosen to meet the unbelted test presents such a risk. Although the agency is not legally authorized to eliminate the test, it has proposed temporary changes to the testing requirements that would permit significant depowering. The agency took several other actions that would affect vehicles produced during the next several model years. It issued a final rule requiring vehicles made on or after February 25, 1997, to be equipped with new, attention-getting labels that clearly warn consumers about the potential dangers associated with air bags. (61 FR 60206; November 27, 1996) It issued another final rule extending, until September 1, 2000, a provision allowing manufacturers the option of putting a manual cut-off switch for the passenger air bag in vehicles with no rear seat or with a rear seat too small for rear-facing child restraints. (62 FR. 798; January 6, 1997)

The agency also proposed two temporary options that would permit or facilitate the depowering of current air bags. (62 FR 807; January 6, 1997) For the unbelted crash test requirement, the first option would replace the existing ''60 g's'' chest injury criterion with a less stringent ''80 g's'' criterion. The second option would convert the unbelted crash test requirement from a test of complete vehicles in barrier crashes, to a sled test using an unbelted dummy seated in a body buck and a standardized 125 millisecond crash pulse. That crash pulse is based on a November 1996 submission from the American Automobile Manufacturers Association. Comments on the deactivation and depowering proposals were due February 5, 1997.

Agency Actions to Increase U.S. Belt Use Rates

As the agency noted in its depowering proposal, NHTSA is participating with vehicle manufacturers, air bag suppliers, insurance companies and safety organizations in a coalition effort to address the adverse effects of air bags by increasing the use of safety belts and child seats. Substantial benefits could be obtained from achieving higher safety

[3] Belt use among fatally injured front seat occupants of cars and light trucks is lower, approximately 37 percent, based on 1995 FARS data. The lowness of this rate reflects a number of factors, including the belt use rate by motorists in general and the effectiveness of belt use in preventing fatal injury. A more useful belt use rate is the rate among occupants involved in potentially fatal crashes. Those crashes include all fatal crashes as well as all crashes in which there would have been a fatality but for belt use. The use rate in potentially fatal crashes is slightly over 50 percent.

[4] Some State surveys are limited to passenger cars. The agency's latest National Occupant Protection Use Survey, a probability-based study of safety belt use in all vehicle types, indicates a current use rate of 58 percent. Another survey will be conducted in 1997.

[5] The burst of legislative activity after the 1984 decision was not coincidental. The 1984 decision provided that the automatic protection requirements would be rescinded if the Secretary of Transportation determined by April 11, 1989 that State safety belt use laws meeting specified conditions had been passed by a sufficient number of States to cover two-thirds of the U.S. population. That date passed without such a determination having been made.

[6] In ISTEA, the Congress also provided that States that failed to adopt mandatory safety belt use laws would have a percentage of their Federal-aid highway construction funds transferred to their highway safety programs.

belt use rates. If the safety belt use rate were 75 percent in potentially fatal crashes instead of the current level of 52.6 percent, an additional 4,000 lives would be saved annually.

On January 23, 1997, the President issued a memorandum directing the Department to work with the Congress, the States, and other concerned persons, including representatives of the automobile and insurance industries, and safety and consumer groups, and within 45 days (March 9, 1997) submit a plan to the President for increasing safety belt use nationwide.

The President specified that the plan shall address, among other things, the State laws that require the use of seatbelts, assistance from the Department of Transportation to improve those laws, and a comprehensive education campaign on behalf of the public and private sector to help the public understand the need to wear seatbelts.

Agency Announcement of Public Workshop on Smart Air Bags

Finally, with respect to the longer term, NHTSA announced that it would conduct a public workshop concerning smart air bags. (62 Fed. Reg. 2996; January 21, 1997) The purpose of the workshop was to foster a constructive dialogue with the industry, consumer groups and other parties concerning issues related to mandating the introduction of reliable ''smart'' air bags that either suppress deployment or modulate the level of deployment under circumstances in which full deployment might cause serious injury. In addition to ''smart'' technology, the workshop addressed other air bag technologies that could reduce the risk of air bag injuries but that have not been employed in current air bag designs. It also explored the question whether amendments to the standard are needed that could prove counterproductive in the long term or whether suitable technology can be installed under the current standard, as some air bag suppliers have suggested. The workshop was held February 11–12, 1997, in Washington, D.C.

Petition for a Moratorium on the Unbelted Test Requirement

Out of concern about the deaths caused by air bags, Senator Dirk Kempthorne sent the agency a letter, dated December 4, 1996, petitioning the agency to commence rulemaking to establish an immediate moratorium on the unbelted test requirement.

In support of his petition, the Senator said in his letter:

> This unbelted standard was developed when few Americans used seat belts. Now 49 states require seat belts to be worn, and nearly 70% of Americans use them. In providing protection to those adults who choose not to obey seat belt laws, we are jeopardizing the lives of our children, as well as small women. That is an unacceptable policy choice.

He argued that, in the absence of the unbelted test requirement, air bags could be developed that ''could improve the performance of air bags for belted occupants, provide significant protection for unbelted occupants, and, most importantly, significantly reduce injuries to children.''

Senator Kempthorne amplified his views about the need for, and possible benefits of, his requested amendment during the January 9 Senate hearing. He argued that NHTSA's proposals do not go far enough:

> I agree that depowering is required, but unless the administration acts on my proposal, both smart and depowered air bags must still protect adult males who refuse to wear their seat belt. That still puts children and women at risk * * *. [T]he Administration even today insists that adults not wearing seat belts should be protected at the expense of children and women. While 49 States require seat belts to be used, this Federal policy says, in essence, law breakers who don't wear seat belts will be protected, but maybe at the cost of the children. Seat belts provide the primary protection in all types of crashes. Air bags are intended to provide supplemental protection in car accidents * * * Air bags should supplement seat belts, not replace them. Federal highway safety policy should acknowledge and recognize individual responsibility.

In closing, he listed the benefits he anticipated from that his proposed moratorium. He stated that the moratorium:

> [O]ne, will make air bags live up to [their] rightful supplemental safety responsibility.
> Number two, will increase safety for two-thirds of the American people who obey the law and wear seat belts.
> Number three, will get safer bags into cars faster.
> Number four, will better protect women and senior citizens.
> Number five, will minimize chances of children being killed.

Views of Other Participants in the Senate Hearing

Statements by Committee members and witnesses during the Senate hearing on January 9 illustrate the range of views and arguments regarding the unbelted test requirement. Support for elimination of the requirement was expressed by the President of the American Automobile Manufacturers Association and the President of the Association of International Automobile Manufacturers.

Expressing his personal views, the Chairman of the National Transportation Safety Board said:

> Federal regulations and NHTSA's recent proposal to depower air bags * * * still require that vehicle test procedures be based on unrestrained occupants. In essence, air bags are being designed, because of certification testing requirements, primarily to protect unbelted, rather than belted occupants, even though the air bags are being promoted as supplemental restraints systems and the majority of motor vehicle occupants now use seat belts. Air bag regulatory standards, based on unrestrained occupants, are no longer appropriate.

He suggested that air bag performance certification testing should be based primarily on belted occupants.

Mr. Robert Sanders, representing the Parents' Coalition for Air Bag Warnings, a group composed of parents of young children killed by air bags, did not explicitly address the issue of the unbelted test requirement. However, Mr. Sanders, himself a parent of a child killed by an air bag, questioned some of the same arguments used in support of eliminating the requirement:

> This problem is not a problem with the regulators. It's also not a problem with the safety standard. The safety standard 208 * * * does not say that they [the vehicle manufacturers] can't make a bag that has less power. They can have a bag that has a lot of power when it is needed, for an adult, and less power when it's not needed, for a child or for an unbelted occupant. And it is a fact that GM successfully designed such a system in the mid 70's.
>
> They [the vehicle manufacturers] are saying that the Federal government safety standard compels us to make a bag that's dangerous for children. Therefore, please change the safety standard.
>
> There's nothing wrong with the safety standard * * *. They had the capability to comply with 208 and simultaneously make a bag that was safe and effective for all sizes of occupants.

Additional concerns about eliminating the unbelted test requirement were raised by several other participants:

- U.S. Senator Richard Bryan asked whether a moratorium on the unbelted test requirement might be equivalent to ''no standard'' at all for air bag performance.
- Joan Claybrook, President of Public Citizen, suggested that the existing standard does not force vehicle manufacturers to produce air bags that pose a risk to young children and women in low speed crashes. She said that manufacturers have the flexibility under the Standard to use dual level inflators based on crash severity. In low speed crashes, there would be a low level of inflation and in high speed

crashes, an appropriately higher level of inflation.

• Ricardo Martinez, Administrator of NHTSA, noted that of the approximately 1,700 persons whose lives had been saved by air bags, an estimated 1,200 of them were unbelted.

Recent Agency Statements About the Unbelted Test Requirement

During the Senate hearing on January 9, Senator Kempthorne asked the agency to provide its views regarding its legal authority to eliminate the unbelted test requirement. In a letter dated January 13, 1997, the agency responded to the Senator, concluding that it lacked such authority. The agency pointed out the following:

> In section 2508(a)(1) of that statute, which is currently codified at 49 U.S.C. 30127(b), Congress directed NHTSA to amend FMVSS No. 208 ''to provide that the automatic occupant protection for the front outboard designed seating positions [of certain vehicles] shall be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1 of such Standard.'' Thus, each vehicle must have an air bag that provides ''automatic occupant protection.'' If the unbelted test were eliminated from FMVSS No. 208, such that vehicles only had to satisfy the performance requirements of the standard with the manual belts attached, there would be no way to ensure that the air bags would in fact provide ''automatic'' protection to front seat occupants.[7]

NHTSA's January 13 letter to the Senator noted that, as part of its analysis of the air bag problem and its efforts to identify the best solutions, the agency considered whether eliminating the unbelted test requirement would be advisable, putting aside the issue of legal authority. At that time, the agency concluded that elimination was unnecessary. NHTSA decided that other measures would enable vehicle manufacturers to depower air bags to an extent that would eliminate much of the risk to belted occupants and children and that the agency's other regulatory solutions (deactivation, enhanced labels, cut-off switches, and smart air bags) would address the remaining risk. Additional depowering appeared undesirable, given the associated trade-offs. As the agency stated in its January 13 letter:

> Our research indicated that depowering air bags in the range of 20–35 percent would reduce the risk to children without significantly increasing the risk that the bags would be too weak to protect occupants in high-speed crashes. Our tests indicated that depowering beyond that level produced little additional benefit for children, and markedly increased the risk for larger occupants. The amendment we proposed on January 6, 1997, will enable the manufacturers to depower their air bags by the 20–35 percent that seems to present the best balance for the safety of all occupants.

Nevertheless, the agency recognized that there might come a point at which dropping the unbelted test might become appropriate for reasons other than additional depowering. As NHTSA noted in its depowering proposal:

> The agency recognizes that, at some point, belt use might rise to a point at which retention of the unbelted test requirements might no longer be appropriate. The agency notes that belt use in Australia is over 95 percent, and averages 93 percent in Canada. However, as noted above, the belt use among fatally injured vehicle occupants is less than 40 percent.

(62 FR 807, at 824)

The level of safety belt use is an essential factor in evaluating the effects of eliminating the unbelted test, since there is little doubt that most if not all vehicles now on the market can comply with the injury criteria by means of safety belts alone. Thus, if the unbelted test were deleted and no other tests were added to regulate the performance of air bags, the vehicle manufacturers would be free to install air bags that afford no protection to either belted or unbelted occupants. In effect, the standard would no longer regulate the level of protection afforded to unbelted occupants. This would be a fundamental departure from the original concept of the standard, which was to protect unbelted occupants as well as belted occupants.

Agency Decision To Request Public Comment

NHTSA has decided to seek public comment on its tentative conclusions about the appropriateness of dropping the unbelted test requirement under the current circumstances, and the factual issues presented by the request for a moratorium. Given the importance of the underlying problem and the interest in eliminating the unbelted test requirement expressed by participants in the Senate hearing, the agency believes that it would be beneficial to obtain public comments analyzing the benefits and disbenefits of eliminating the unbelted test requirement. NHTSA is seeking as much detailed technical data as possible in support of any comments. Although the agency currently lacks the authority to take that action, it could ask Congress to adopt the necessary legislation.

To help frame the issues relevant to the merits of eliminating the unbelted test, the agency has drawn the following arguments from the information submitted to it:

Arguments for eliminating the unbelted test:

(1) A vehicle safety standard should not benefit some occupants by means that cause harm to others. The rule should be: ''First, do no harm.''

(2) To the extent that the need to satisfy the injury criteria of Standard No. 208 in an unbelted test results in air bags that are causing injuries in low-speed crashes, the standard needs to be changed.

(3) The increase in national belt use rate to 68 percent has made the unbelted test requirement obsolete.

(4) Air bags ought to be designed for the benefit of those who obey the law and use their safety belts.

(5) Air bags are intended to be supplemental safety devices and ought to be optimized for the benefit of belted occupants, and thus save increased numbers of those occupants.

Arguments against eliminating the unbelted test:

(1) The unbelted test requirement does not require manufacturers to install air bags that cause deaths in low speed crashes. Technology such as dual level inflators, higher deployment thresholds and smart air bags have the potential to prevent deaths in low speed crashes, while preserving the ability of air bags to protect occupants in higher speed crashes.

(2) In the short run, the agency's depowering proposal will allow manufacturers to achieve the same goals sought by proponents of eliminating the unbelted test requirement, while retaining some protection for unbelted occupants.

(3) Thirty-two percent of front seat occupants—and 50 percent of occupants in potentially fatal crashes—do not wear safety belts. The air bag is the primary protection for these people, not merely supplemental protection.

(4) If the unbelted test requirement were eliminated, with no compensatory changes, future air bags might be less protective than current ones, even for belted occupants. If air bags were depowered too much, they would not provide adequate protection at higher speeds or for larger occupants, whether belted or unbelted.

(5) Without the unbelted test, the performance of air bags would not be regulated. The manufacturers would be free to reduce the power of air bags to any level the market would permit. Safety decisions like this are too critical to be left to the marketplace.

[7] A more detailed analysis of this legal issue has been prepared by NHTSA and placed in the docket for this proceeding.

Questions for Commenters

1. What would the benefit of eliminating the unbelted test requirement be compared to the projected benefits of the agency's proposed options to allow depowering of air bags? Would eliminating the unbelted test requirement allow greater depowering than adoption of the 80g option? The sled test option? Would greater depowering have benefits or disbenefits?

2. What changes would the manufacturers make in response to the elimination of the unbelted test requirement? How long would it take to implement those changes? Would manufacturers respond differently to eliminating the unbelted test requirement than they would if the agency adopted the 80g option? The sled test option?

3. How and to what extent could air bags be made more effective for belted occupants in the absence of an unbelted test requirement? Would these changes affect the performance of air bags in protecting unbelted occupants?

4. Given current belt use rates, should Federal law continue to require automatic protection for unbelted occupants? If so, should the required level of protection be the same as for belted occupants? Should the ISTEA air bag mandate be repealed to allow manufacturers to provide automatic protection by automatic safety belts?

5. Is there a level of safety belt usage at which it would be appropriate to no longer require protection for unbelted occupants? If so, what level?

6. If the unbelted test requirement were eliminated, should that elimination be coupled with simultaneous compensatory changes to the injury criteria or to the test requirements, or both, to ensure the continued protective value of air bags? Changes might take the form of making the existing criteria more stringent, adding additional criteria, or both. If compensatory changes are desirable, what changes should be made? What level of protectiveness should be required for belted occupants? For unbelted occupants?

7. Would the effects of eliminating the unbelted test requirement be different for driver air bags versus passenger air bags? Have the design changes that the vehicle manufacturers have been making to driver air bags significantly reduced the problem of driver deaths caused by air bags? For unbelted drivers? For belted drivers?

8. If the unbelted test requirement were eliminated, should such elimination be permanent or temporary? If temporary, for how long should it be suspended? Should it be reinstated after smart air bags are required?

9. Would any potential harm from eliminating the unbelted test fall disproportionately on groups who tend to have lower belt use rates and higher crash rates, such as young drivers? Would the belts designed to protect belted occupants be less effective for unbelted occupants?

10. What should the role of the Federal government be with respect to the design of air bags so as to minimize air bag deaths in low speed crashes? Should government merely point out potential ways of avoiding such consequences and let the marketplace decide whether they should be implemented, or should it mandate features that will minimize the risk?

11. If the unbelted test were to be deleted through legislation, should that action be coupled with measures to secure the enactment of stronger safety belt use laws or other measures to increase safety belt use?

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will mail the postcard back.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50)

Issued on February 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4985 Filed 2–24–97; 4:51 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 022197B]

RIN 0648–AI82

Fisheries Off West Coast States and in the Western Pacific; Commercial and Recreational Pacific Salmon Fishery Amendment 12; Pacific Coast Groundfish Fishery Amendment 10

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

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP) and Amendment 10 to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) for Secretarial review. Amendment 12 would allow retention, but not sale, of salmon bycatch by groundfish trawl vessels under a monitoring program that meets certain guidelines; would specify Endangered Species Act (ESA) standards as management objectives for salmon species listed under the ESA; and would update the Salmon FMP,

with no change in the FMP's management objectives. Amendment 10 would allow retention, but not sale, of salmon bycatch by groundfish trawl vessels under a monitoring program that meets certain guidelines.

DATES: Comments on Amendments 12 and 10 must be received on or before April 28, 1997.

ADDRESSES: Comments on Amendments 12, 10, or supporting documents should be sent to Mr. William Stelle, Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendments 12 and 10, the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 12 to the Pacific Coast Salmon FMP and Amendment 10 to the Groundfish FMP would authorize rulemaking to allow retention of salmon bycatch by groundfish trawl vessels under an appropriate monitoring program. Amendment 12 to the Salmon FMP would also incorporate NMFS ESA standards as management objectives for salmon species listed under the ESA, and update the Salmon FMP, without changing the existing FMP's management objectives.

The portion of the amendment regarding ESA standards is necessary to bring the Salmon FMP into compliance with the March 1996 Biological Opinion issued under section 7 of the ESA regarding the impacts of the Pacific Coast salmon fishery on salmon stocks listed under the ESA. The update of the Salmon FMP merely combines into one document the operative language of the 1984 framework FMP and its amendments. Changes to management objectives to comply with the ESA and the update of the salmon FMP will result in minor modifications to the salmon regulations. A proposed rule to implement those modifications will be issued shortly.

NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. A proposed rule to implement Amendment 12 to the Salmon FMP has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on this rule in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendments to be considered in the approval/disapproval decision on the amendments. All comments received by the end of the comment period for the amendments, whether specifically directed to the amendments or the proposed rule, will be considered in the approval/disapproval decision on the amendments.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1997.

Bruce Morehead,

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

[FR Doc. 97–4871 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 39
Thursday, February 27, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 21, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: Rural Economic Development Loan and Grant Program.
OMB Control Number: 0570–New.
Summary: Information collected includes application for loans and grants as well as work plans, scope of work, performance reports and financial status reports.
Need and Use of the Information: The information is used to select projects and to make sure the funds are used for the intended purpose.
Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 180.
Frequency of Responses: Recordkeeping; Reporting: On occasion, Annually.
Total Burden Hours: 7,005.

Rural Housing

Title: Community Facility Loan and Grant Program and Water and Waste Loan and Grant Program.
OMB Control Number: 0575–0015.
Summary: Information collected includes application for Federal assistance and budget, expense, contract and inspection information.
Need and Use of the Information: The information is used to determine applicant/borrower, eligibility project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes.
Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 9,511.
Frequency of Responses: Recordkeeping; Reporting: On occasion, Annually.
Total Burden Hours: 270,789.

Farm Service Agency

Title: Upland Cotton Domestic User/Exporter Agreement and Payment Program.
OMB Control Number: 0560–0136.
Summary: To participate in this program, exporters and domestic users must sign an agreement with CCC. A name and address file of program participants is maintained. This information is collected when the participant submits CCC–1045.
Need and Use of the Information: The information is necessary to establish eligibility for payments of domestic users and exporters of US upland cotton and to accurately determine the level of payments authorized under this program.
Description of Respondents: Business or other for-profit.
Number of Respondents: 300.
Frequency of Responses: Recordkeeping; Reporting: On occasion; When payment rate is in effect.
Total Burden Hours: 2,750.

Forest Service

Title: Fuelwood and Post Assessment in Selected States.
OMB Control Number: 0596–0009.
Summary: the Forest and Rangeland Renewable Resources Research Act of 1978 as amended by the Energy Security Act of 1980 requires the Secretary of Agriculture to make and keep current a comprehensive survey and analysis of the present and prospective conditions of forest and range lands.
Need and Use of the Information: The collection is needed to estimate the production and consumption of residential fuelwood and posts in individual states.
Description of Respondents: Individuals or households; Business or other for-profit.
Number of Respondents: 2,940.
Frequency of Responses: Reporting: On occasion; Annually.
Total Burden Hours: 201.

Rural Housing Service

Title: 7 CFR 1910–A, Receiving and Processing Applications.
OMB Control Number: 0575–0134.
Summary: Information collected includes business organization, farm training and experience, credit tests from commercial lenders and a legal description of real estate.
Need and Use of the Information: The collection of information is required to ensure that the direct farm loan programs are being administered in accordance with applicable laws and regulations and that loans are made to applicants who have reasonable prospects for repaying their loans.
Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local and Tribal Government.
Number of Respondents: 24,000.
Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 80,568.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–4933 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

South Quartzite Salvage Timber Sale Analysis, White River National Forest; Garfield County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to disclose effects of alternative decisions it may make to harvest dead Engelmann spruce and associated road construction within the South Quartzite Salvage Timber Sale Planning area, on the Rifle Ranger District of the White River National Forest.

DATES: Written comments concerning the scope of the analysis should be received on or before April 14, 1997.

ADDRESSES: Send written comments to Veto J. LaSalle, Forest Supervisor, White River National Forest, PO Box 948, 9th and Grand Ave., Glenwood Springs, Colorado 81602. Mr. LaSalle is the Responsible Official for this EIS.

FOR FURTHER INFORMATION CONTACT: Robert W. Currie, Project Coordinator, Holy Cross Ranger District, 24747 U.S. Highway 24, PO Box 190, Minturn, CO 81645, (970) 827–5715.

SUPPLEMENTARY INFORMATION: On May 16, 1996 the White River National Forest released a Draft Environmental Assessment for the proposed action and alternatives to that proposed action under Public Law 104–19. Based on comments received from members of the public, the Interdisciplinary Team has determined that the proposed action and alternatives to that action represent an inventoried roadless area entry. Therefore, an Environmental Impact Statement is required as per Forest Service Handbook 1909.15, Section 20.6. The proposed action proposes to harvest approximately 4.0 to 5.0 million board feet from approximately 1,280 acres of dead Engelmann spruce using a combination of ground-based (approximately 110 acres) and helicopter yarding (approximately 1,180 acres) and to construct approximately 0.9 miles of new specified road.

The proposed action is consistent with governing programmatic management direction contained in the *Rocky Mountain Regional Guide* and FEIS for Standards and Guidelines (1983) and in the Final EIS and *Land and Resource Management Plan for the White River National Forest* (LMP, 1984). The LMP allocated the proposed timber sale area to semi-primitive motorized and semi-primitive non-motorized use and allows for timber harvest. The site-specific environmental analysis provided by the EIS will assist the Responsible Official in determining which improvements are needed to meet the following objectives: Reduce natural fuel loadings and to provide wood products for the nation and opportunities for timber related jobs. Alternative will be carefully examined for their potential impacts on the physical, biological, and social environments so that tradeoffs are apparent to the decisionmaker.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process, during which the Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested in or affected by the proposed action. This information will be used in preparing the EIS. No public meetings are planned for this project. Public comments received during initial scoping and those raised during public review of the Draft Environmental Assessment for this project will be incorporated into this EIS. Individuals who have provided comments during initial scoping, on the Draft Environmental Assessment, and those who provide comments on this EIS will receive copies of the Draft EIS for their review.

Preliminary issues include the potential effects of proposed actions on the following elements of the biological, physical, and social environments: wildlife and wildlife habitat, recreation resource values, roadless area resource values, and watershed health resources. The direct, indirect, cumulative, short-term, and long-term aspects of impacts on national forest lands and resources, and those of connected or related effects off-site, will be fully disclosed.

Preliminary alteratives include the proposed action (described above) and No Action, which in this case is deferring treatment of the area until the future. A third preliminary alternative could be analyzed which would harvest approximately 6.0 to 7.0 million board feet of approximately 2,500 acres of dead Engelmann spruce using a combination of ground-based and helicopter yarding and to construct approximately 3.0 miles of new specified road. Additional alternatives may be developed after the significant issues are clarified and management objectives are fully defined. The Responsible Official will be presented with a range of feasible and practical alternatives.

Permits and licenses required to implement the proposed action will, or may, include the following: consultation with U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act, review from the Colorado Division of Wildlife, and clearance from the Colorado State Historic Preservation Office.

The Forest Service predicts the draft environmental impact statement will be filed during the fall of 1997 and the final environmental impact statement during the spring of 1998.

The Forest Service will seek comments on the draft environmental impact statement for a period of 45 days after its publication in the Federal Register. Comments will then be summarized and responded to in the final environmental impact statement.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in

the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: February 19, 1997.

Gregory A. Kuyumjian,

Acting Forest Supervisor.

[FR Doc. 97–4839 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–BW–M

Natural Resources Conservation Service

Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Contour Buffer Strips (332), Filter Strips (393A), Tree/Shrub Pruning (660A), Riparian Forest Buffer (391A), and Manure Transfer (634). NRCS State Conservationist' s who choose to adopt these practices for use within their state will incorporate them into Section IV of their Field Office Technical Guide (FOTG). Some of these practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Submit individual inquiries in writing to Gary Nordstrom, Director, Ecological Sciences Division (ECS), Natural Resources Conservation Service (NRCS), P.O. Box 2890, Room 6154–S, Washington, DC 20013–2890.

Single copies of these standards are available from NRCS–ECS in Washington, DC. Copies are also available electronically from the NRCS server at Fort Worth, Texas. The name of the server is ftp.ftw.nrcs.usda.gov. Practice standards appear as files in /pub/nhcp/pending. Practice code numbers are used as file names in this subdirectory. These standards are available as MS Word 6.0 files. They should be downloaded from the FTP server as binary files.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Gary R. Nordstrom,

Director, Ecological Sciences Division, Natural Resources Conservation Service.

[FR Doc. 97–4945 Filed 2–26–97; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 5:00 p.m. on Friday, March 14, 1997, at the U.S. District Court Building, 7th Floor Hearing Room, 230 North First Avenue, Phoenix, Arizona 85025. The purpose of the meeting is to hold a factfinding forum on employment.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Pena, 602–254–3407, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–4799 Filed 2–26–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on Saturday, April 5, 1997, at the Townes Hall Auditorium, the University of Texas School of Law, 727 E. 26th Street, Room 2–114, Austin, Texas 78705. The purpose of the meeting is to hold a public consultation on affirmative action and admissions practices and policies in Texas institutions of higher education, post *Hopwood* v. *Texas.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adolph Canales, 214–653–6779 or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–4800 Filed 2–26–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China; Termination of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty new shipper administrative review.

SUMMARY: On April 26, 1996, the Department of Commerce (the Department) published in the Federal Register (61 FR 18568) the notice of initiation of the administrative review of the antidumping duty order on Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW) from the People's Republic of China (PRC). We are terminating this review based on 776(b) of the Tariff Act of 1930 as

amended by the Uruguay Round Agreements Act (the Act) as a result of evidence on the record which indicates that the respondent in these proceedings failed to cooperate by omitting from submissions certified as being complete and accurate, information material to determining its eligibility for new shipper status.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1996, Beijing M Star Pipe Corporation (BMSP), an interested party, requested a new shipper administrative review of the antidumping duty order on CDIW for the period August 1, 1995 through February 29, 1996, pursuant to 751(a)(2)(B) of the Act. Section 751(a)(2)(B) of the Act defines new shippers as exporters and producers who demonstrate in their request for review that they: (1) did not export the subject merchandise to the United States during the POI; and (2) are not affiliated with any exporter or producer who did export the subject merchandise to the United States during that period, including those not examined during the investigation.

In its request for review, BMSP certified the following as complete and accurate: (1) that BMSP, under its current or former name, did not export CDIW from the PRC to the United States during the original period of investigation (POI), February 1, 1992 through July 31, 1992; (2) that BMSP's only affiliation with another PRC company or enterprise is with Beijing Cheng Hong Foundry, which did not export CDIW during the POI; and (3) that BMSP had no affiliations with any person, corporation or enterprise which exported CDIW from the PRC during the POI. Based on these certifications, on April 26, 1996, the Department published in the Federal Register (61 FR 18568) the notice of initiation of that administrative review.

On December 3, 1996, counsel for the domestic industry placed evidence on the record indicating that BMSP is affiliated with persons and/or entities which shipped subject merchandise to the United States during the period of investigation (POI) and argued that, based on this evidence, BMSP is not eligible for review as a new shipper. In particular, the domestic industry provided information showing that Beijing Metals and Minerals Import and Export Corporation, Beijing, China (BMMC) exported subject merchandise to the United States during the POI and that certain senior company officials are presently employed by both BMSP and BMMC.

Respondent does not dispute these facts. In fact, respondent admits in its January 24, 1997 submission that shared management between BMSP and BMMC does exist. Significantly, in a footnote to its submission, BMSP states that ''BMSP acknowledges that it previously misstated the lack of shared managers or officers with any other Chinese exporter.'' This statement is in direct contradiction to BMSP's certified questionnaire response of May 28, 1996 in which it states ''[n]either does BMSP have any relationship with any other producers or exporters of the subject merchandise, including by way of sharing managers or officers.'' In short, BMSP has now apprised the Department of, and the record clearly shows, a material omission or inaccuracy in BMSP's earlier certified submissions.

At issue here is BMSP's eligibility for a new shipper review. This is a new procedure designed to allow new shippers an opportunity for a review ahead of the normal review cycle. The Department is cognizant of the potential for abuse of this procedure and seeks to ensure that it is only used where appropriate. Certifications are critical to the Department's ability to distinguish between legitimate and illegitimate new shipper requests. The Department must rely on the accuracy of the parties' representations in deciding to initiate this type of review. Moreover, the Department attaches great importance to receiving accurate and complete submissions and requires parties to certify these submissions to ensure accuracy and completeness.

The domestic industry argues that the Department should apply a margin to BMSP based on facts available because BMSP failed to disclose that BMSP and BMMC share common management. Section 776 of the Act authorizes the department to apply facts available, inter alia, when a respondent withholds information which significantly impedes a proceeding. In this case, BMSP provided certified submissions that were clearly inaccurate—it stated that BMSP had no relationship with any PRC entity which exported CDIW during the POI, including by way of sharing managers of officers, when in fact BMSP had knowledge that BMSP shares high-level managers with BMMC. Plainly, BMSP's inaccurate representation and omission of highly material information regarding the issue of eligibility for the new shipper review calls into question the reliability of BMSP's total response in this proceeding and, in these circumstances, warrants the use of adverse facts available.

Section 776(b) provides that when a party to the proceeding has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse. Given the importance of receiving accurate and complete information in proceedings we conduct, we have determined to apply adverse facts available pursuant to 775(b) by finding BMSP ineligible for a new shipper review.

This notice is published in accordance with section 353.22(h)(9)(i) of the Department's regulations (19 CFR 353.22.(h)(9)(i)).

Dated: February 14, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–4926 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW) From the People's Republic of China: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On September 2, 1994, the Department of Commerce (the Department) published in the Federal Register (59 FR 45664) the notice of initiation of the administrative review of the antidumping duty order on certain compact ductile iron waterworks fittings and gland (CDIW) from the People's Republic of China (PRC). We are terminating this review as a result of the withdrawal by Star Pipe Products, Inc. (Star Pipe) of its request for the review. The petitioner in this proceeding, the U.S. Waterworks Fittings Producers Council, had requested an administrative review of the same period of sales made by China National Metal Products Import & Export Corporation (CMP). However, on the basis of a court remand, CMP was subsequently, retroactively, excluded

from the antidumping duty order. As a result we terminated the review of CMP on December 29, 1994 as published in the Federal Register (60 FR 2078). Star Pipe was the only other interested party that requested this review.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1994, Star Pipe, an interested party, requested an administrative review of the antidumping duty order on CDIW from the PRC for the period February 18, 1993 through August 31, 1994, pursuant to 751(1)(B) of the Tariff Act of 1930 as amended by the Uruguay Round Agreements Act. On September 2, 1995, the Department published in the Federal Register (59 FR 45664) the notice of initiation of that administrative review. Star Pipe withdrew its request for review on January 17, 1997, pursuant to 19 CFR 353.22(a)(5). The petitioner in this proceeding, the U.S. Waterworks Fittings Producers Council, had requested an administrative review of the same period of sales made by China National Metal Products Import & Export Corporation (CMP). However, on the basis of a court remand, CMP was subsequently, retroactively, excluded from the antidumping duty order. *See Certain CDIW Fittings and Glands from the PRC: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Review in Part; and Amended Final Determination and Order* (60 FR 2078). Although Star Pipe is now withdrawing its request beyond the 90 day time limit set forth in 19 CFR 353.22(a)(5), the Department has the discretion to extend said time limit if the Department decides it is reasonable to do so. Since Star Pipe was the only other interested party that requested this review, the Department considers it reasonable to terminate this review. Therefore, the Department is terminating this review.

This notice is published in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22.(a)(5)).

Dated: February 19, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–4927 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–818]

Certain Pasta From Italy: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on certain pasta from Italy. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5288 or 482–3003, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on certain pasta from Italy, which has a July anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on certain pasta from Italy. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

The standard period of review (POR) in a new shipper review initiated following the semiannual anniversary month is the six months preceding the semiannual anniversary month. However, the Department may expand the standard POR to cover the first exportation of a new shipper. *See Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China,* 61 FR 18568, (April 26, 1996). Therefore, the POR for this review has been expanded to include the semiannual anniversary month.

Antidumping duty proceeding	Period to be reviewed
Italy: Certain Pasta, A–475–818:	
GSA, S.r.l	07/01/96–1/31/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: February 20, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–4928 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the third administrative review of the antidumping duty order on welded stainless steel pipe from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period

December 1, 1994 through November 30, 1995.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on February 1, 1996 (61 FR 3670). On September 12, 1996, we extended the time limit for the preliminary results of administrative review. See Notice of Extension of Time Limits, 61 FR 48126. On January 10, 1997, we published in the Federal Register the preliminary results of this administrative review (62 FR 1435).

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the final results until July 8, 1997. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of review will now be July 8, 1997 (*i.e.*, 180 days after the publication of our preliminary results).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: February 18, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–4929 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–001. *Applicant:* University of California, San Diego, Scripps Institute of Oceanography, 7835 Trade Street, San Diego, CA 92121. *Instrument:* (8) Directional Waverider Buoys. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* The article is intended to be used in support of ongoing and proposed research on the evolution of directional wave spectra across the continental shelf and near complex bathymetric features. *Application accepted by Commissioner of Customs:* January 3, 1997.

Docket Numbers: 97–002, 97–003 and 97–006. *Applicant:* Brigham and Women's Hospital, Harvard Medical School, 75 Francis Street, Boston, MA 02115. *Instrument:* (3) Digital Sleep Recorders, Model Vitaport 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The instruments will be used to record sleep patterns, circadian rhythms and pulmonary functions for studies of the effects of melatonin on sleep disturbances induced by misalignment of the sleep-wake cycle and endogenous circadian phase. *Applications accepted by Commissioner of Customs:* January 8, 1997 and January 16, 1997.

Docket Number: 97–004. *Applicant:* Brooklyn College of the City University of New York, Environmental Sciences Laboratory, 2900 Bedford Avenue, Brooklyn, NY 11210. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the physico-chemical properties of inorganic particulates in the environment. It will be used to determine the morphology, elemental composition, crystal structure, long/short range ordering, microcrystalline structure and d-spacing of crystallographic planes. *Application accepted by Commissioner of Customs:* January 10, 1997.

Docket Number: 97–005. *Applicant:* Massachusetts Institute of Technology, Center for Space Research, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Digital Sleep Recorder, Model Vitaport 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The article is intended to be used for studies of the effects of microgravity on the human body, especially sleep functions, circadian rhythm changes and pulmonary function. *Application accepted by Commissioner of Customs:* January 14, 1997.

Docket Number: 97–007. *Applicant:* University of Oklahoma, Purchasing Department, 660 Parrington Oval, Room 321, Norman, OK 73019. *Instrument:* CO_2/Far-Infrared Laser System. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of narrow-gap semiconductor quantum wells and superlattices to obtain the highest quality cyclotron resonance spectra for analysis to obtain electronic properties. In addition, the instrument will be used for educational purposes in the courses Research for Doctor's Dissertation and Research for Master's Thesis. *Application accepted by Commissioner of Customs:* January 17, 1997.

Docket Number: 97–008. *Applicant:* University of Colorado, Institute for Arctic and Alpine Research, 1560 30th Street, Boulder, CO 80309–0450. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used for measuring the stable isotopic composition (primarily carbon and oxygen) of natural materials such as calcium carbonate sediments, atmospheric gases, natural waters and organic matter. Projects in which the instrument will be used revolve around the general theme of understanding the patterns and causes of climate change. A primary use will be the analysis of calcium carbonate coral reef materials. In addition, the instrument will be used for educational purposes in graduate classes in isotope geochemistry. *Application accepted by Commissioner of Customs:* January 24, 1997.

Docket Number: 97–009. *Applicant:* Georgia Institute of Technology, School of Earth and Atmospheric Sciences, 221 Bobby Dodd Way, Atlanta, GA 30332–0340. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Micromass, United Kingdom. *Intended Use:* The instrument will be used for studies of plant and soil samples, water samples, rock and mineral samples and atmospheric gas samples which will be taken from the natural environment and the fossil record and designed to provide information about research topics related to past climate environment and present-day nutrient cycling. The objectives of the studies include successful analysis of the carbon, oxygen and hydrogen isotope composition of the samples mentioned, with the final step of analysis being measurement of the gas upon the instrument. *Application accepted by Commissioner of Customs:* January 29, 1997.

Docket Number: 97–010. *Applicant:* Stanford University, Department of Pediatrics, 300 Pasteur Drive, Stanford, CA 94304–5119. *Instrument:* Ambulatory Recorder, Model Embla. *Manufacturer:* Flaga hF. Medical Service, Iceland. *Intended Use:* The article is intended to be used for recording physiological signals from human infants to assess the sleep development and the circadian rhythm development of infants. The objective of these studies will be to describe the basic physiological processes which in turn will lead to a better understanding of factors related to Sudden Infant Death Syndrome. *Application accepted by Commissioner of Customs:* February 4, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–4930 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of March 1997.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulation (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke the order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing Duty Orders:

Chile	Standard Carnations	03/19/87
	(C–337–601)	52 FR 8635
France	Brass Sheet and Strip	03/06/87
	(C–427–603)	52 FR 6996
Iran	Raw Pistachios	03/11/86
	(C–507–501)	51 FR 8344
Israel	Oil Country Tubular Goods	03/06/87
	(C–508–601)	52 FR 6999

Opportunity to Object

Not later than the last day of March 1997, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to a revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 20, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–4931 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 021997F]

Marine Mammals; Permits No. 1019 (P619) and 838 (P535)

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

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that the following permittees have requested an amendment: Dr. Catherine Schaeff, Department of Biology, American University, 4400 Massachusetts Avenue, NW, Washington, D.C. 20016, permit No. 1019; and Dr. Stephen J. Insley, National Zoological Park, Smithsonian Institution, Washington, D.C. 20008, permit No. 838.

DATES: Written comments must be received on or before March 31, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P619) - Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432;

(P535) - Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

Written data or views, or requests for a public hearing on this request should

be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular amendment requests would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The amendments to permit no. 1019, issued on November 11, 1996 (61 FR 55134) and permit no. 835, as amended, June 3, 1996 (61 FR 29741) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit no. 1019 authorizes the permit holder to import gray whale samples from Canada and Mexico. The permit holder requests authorization to import Southern right whale samples from South America, South Africa and Australia for genetic analyses.

Permit no. 838 authorizes the permit holder to mark and tag up to 100 fur seals, tissue sample up to 60 adult males and 20 mothers and 20 offspring, and to inadvertently harass up to 150 fur seals over a 4-year period. The Holder requests authorization to: Sample an additional 40 male seals; inadvertently harass an additional 100 seals during vocal playback experiments; and extend the permit through December 31, 1997.

Dated: February 21, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–4872 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

February 21, 1997

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In a Memorandum of Understanding (MOU) dated February 6, 1997, the Governments of the United States and El Salvador agreed to increase the 1997 limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 59864, published on November 25, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and the MOU dated February 6, 1997, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 19, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on February 27, 1997, you are directed to increase the limit for Categories 352/652 to 10,000,000 dozen [1], as provided for under the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated February 6, 1997 between the Governments of the United States and El Salvador.

The guaranteed access level for Categories 352/652 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–4791 Filed 2–26–97; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Technical and Administrative Support for the National Service Leader Schools Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to $350,000 to provide assistance in developing and implementing a National Service Leader Schools (NSLS) program. The NSLS program will recognize outstanding middle and high schools providing community service and service learning opportunities to students. Under this new program, the Corporation intends to (1) Work with local communities and experts to identify standards for model community service and service learning programs in middle and high schools; (2) offer opportunities for all schools to meet those standards and receive recognition for doing so; and (3) provide awards to a select group of leader schools, recognized at the State and national levels.

The successful applicant organization will assist in the design of the program; conduct outreach and promote the activity; set up and work with a group of qualified individuals to define appropriate standards; and work with schools, local school districts, and States to select and recognize programs.

DATES: Application materials will be available beginning March 10, 1997. Applications must be received by the Corporation at the address listed below by 3:00 p.m. Eastern Standard Time on

April 18, 1997. Applications may not be submitted by facsimile.

ADDRESSES: Interested organizations may request application materials by writing to the Corporation for National Service, Attn: Patricia Holliday, 1201 New York Avenue NW., Washington, DC 20525, or by facsimile at (202) 565–2777.

FOR FURTHER INFORMATION CONTACT: For further information, contact Patricia Holliday at (202) 606–5000, ext. 187. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, *et seq.*, the Corporation may ''support innovative and model programs.'' Under this authority, the Corporation intends to support a National Service Leader Schools (NSLS) program that will (1) Identify standards for model community service and service learning programs in middle and high schools; (2) offer opportunities for schools to meet those standards and receive recognition for doing so; and (3) make awards to several schools at State and national levels. To accomplish this, the Corporation will enter into a cooperative agreement with an organization selected in accordance with this notice. Through this notice, the Corporation invites applications from interested organizations to assist in the development and implementation of the NSLS program, working closely with staff at the Corporation.

Organizations Eligible to Apply

Public agencies, non-profit organizations, institutions of higher education, Indian tribes, and for-profit companies are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1611, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(4), that engages in lobbying activities is not eligible to apply.

Purpose and Scope of the National Service Leader Schools Program

The purpose of this program is to encourage community service and service learning programs at middle and high schools across the country. To this end, the NSLS program will recognize, at various levels, outstanding schools and will assist other schools in adopting outstanding programs and practices. This program is national in scope and will involve the participation of experts in the field as well as State and local stakeholders, including State Educational Agencies, State Commissions on National and Community, schools, and school districts.

Activities under this Cooperative Agreement

The successful applicant will work with representatives of local schools and other experts in education to develop a set of criteria to be used in selecting leader schools, with possible considerations including the extent to which schools: (1) Incorporate service-learning into their mission and curriculum; (2) emphasize both service and learning; (3) foster service activities that benefit both those serving and those served; (4) involve students, faculty, administrators, parents, and other community members.

The successful applicant will assist in designing a selection process that effectively utilizes State agencies, schools, and other community resources. The Corporation anticipates that schools would initially self-select to be recognized as leader schools, and that a limited number of leader schools would also be selected for special recognition at the State or national level. Recognition at the State or national level may include the funding of scholarships to particularly noteworthy individuals.

The successful applicant will assist in developing an effective process, utilizing State Educational Agencies or State Commissions, through which information about the NSLS program is disseminated to other schools and school districts within a State.

The Corporation anticipates that it will be substantially involved in carrying out the NSLS program, with the successful applicant providing administrative and technical support during all phases of the program. The Corporation's involvement will include approval of the final program design and implementation plan prepared by the successful applicant. The Corporation expects that the project period will be June 1, 1997, through May 31, 1998, with the possibility of renewal subject to performance, continuing need, and the availability of funds.

Selection Criteria

The Corporation will initially determine whether the organization is eligible and whether the application contains the information required in the application materials. After this initial screening, the Corporation will assess applications based on the criteria listed below (in descending order of importance):

1. The applicant's organizational experience and capacity to carry out the activities described in this notice;
2. The quality of the applicant's proposed plan of operation, including a description of how and when the applicant plans to meet each objective of the program;
3. The quality of key personnel the applicant plans to use in carrying out the NSLS program;
4. The extent to which (a) The budget is adequate to support the NSLS program and (b) proposed costs are reasonable in relation to the objectives of the NSLS program.

Dated: February 21, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–4942 Filed 2–26–97; 8:45 am]

BILLING CODE 6050–28–P

Presidio Leadership Center

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of customized leadership training.

SUMMARY: The Corporation for National Service's Presidio Leadership Center invites organizations operating national service programs supported by the Corporation to request customized leadership training.

DATES: Organizations may request customized leadership training at any time following publication of this notice.

ADDRESSES: Responses to this notice should be sent to Lisa Spinali, Presidio Leadership Center, P.O. Box 29995, Building 386, The Presidio of San Francisco, CA 94129. Facsimile: (415) 561–5955.

FOR FURTHER INFORMATION CONTACT: Lisa Spinali at (415) 561–5950, ext. 115. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION: The Corporation for National Service is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting national service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports several types of national service, including: AmeriCorps*State/National, AmeriCorps*VISTA, AmeriCorps*National Civilian Community Corps; Learn and Serve America (K–12 and Higher Education); and the National Senior Service Corps (Retired Senior Volunteer Program, Foster Grandparent Program, Senior Companion Program).

The Corporation provides training and technical assistance to national service programs in a variety of areas and uses the Presidio Leadership Center (PLC) for leadership training. The PLC currently provides an executive-level training program (the National Service Executive program) open to leaders of Corporation-funded programs by application only. The purpose of this notice is to make available the leadership training resources of the PLC to more national service programs by offering the opportunity for a limited number of programs to receive customized training at the PLC. The PLC is also prepared to accommodate requests to provide customized training at locations other than the PLC.

Portions of the National Service Executive program curriculum—such as facilitative leadership, meeting skills management, situational leadership, building collaborative teams, customer service, managing change, and the use of different assessment instruments as a means of individual leadership development—are most appropriate for customized assistance. Training sessions could range from one to five days in length depending on the number of topics included. Topics and length of time necessary may need to be adjusted based upon the objectives for the training identified by the requestor.

The PLC will incur its fixed costs associated with curriculum design and trainers. However, the requester will be responsible for trainer travel and lodging costs (for training sessions conducted at locations other than the PLC) and the cost of any necessary materials (*i.e.,* handbooks, assessment instruments, etc.). The Corporation encourages requesters to involve individuals who have already been trained by the PLC (*i.e.,* National Service Executive Program alumni and AmeriCorps Leaders) as a means of reducing costs.

The PLC is committed to achieving the greatest impact possible through its limited resources, and therefore must exercise substantial discretion in acting on requests for this assistance. The PLC is particularly interested in providing training sessions for participants across all program streams within a State or a region, or for multiple similar programs within a State or region.

Interested national service programs should make their request in writing to the PLC, describing: (1) The type of training requested; (2) the type of national service program or programs operated by the requesting or co-sponsoring organizations; (3) the preferred time frame; (4) the ability to cover necessary costs; and (5) the expected number and background of participants.

The Corporation will consider requests for customized leadership training as they are received, taking into consideration the following factors:

1. Achieving balance across program type and geographical area.
2. Number of participants.
3. Breadth of participating programs and organizations.
4. Constraints on the PLC's resources.
5. Non-duplication of training and technical assistance otherwise available.

Dated: February 21, 1997.

Barry W. Stevens,

Acting General Counsel.

[FR Doc. 97–4943 Filed 2–26–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–09]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–09, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: February 24, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Honorable Newt Gingrich

Speaker of the House of Representatives, Washington, D.C. 20515–6501

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–09, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $95 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA Director.

Attachments

Transmittal No. 97–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office (TECRO) in the United States.

(iii) *Total Estimated Value:*

Major Defense Equipment*	$77 million.
Other	18 million.
Total	95 million.

*as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Fifty-four HARPOON missiles with containers, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) *Military Department:* Navy (LFV).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* February 14, 1997.

Policy Justification

Taipei Economic and Cultural Representative Office (TECRO) in the United States—HARPOON Missiles

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 54 HARPOON missiles with

containers, spare and repair parts, support equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $95 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96–8.

The recipient will use these missiles to maintain an anti-surface warfare capability on its 1052 KNOX class ships leased from the U.S. Navy. The recipient will have no difficulty using this equipment.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, St. Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex—Item No. vi

(vi) *Sensitivity of Technology:*

1. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components
b. Missile Characteristics and Performance Data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 97–4863 Filed 2–26–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Materiel Command.

ACTION: Notice.

In compliance with Section 35–6 (c)(2)(A) of the Paperwork Reduction Act of 1995, currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 28, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Headquarters Air Force Materiel Command, 4375 Chidlaw Road, Suite 6, Wright-Patterson AFB, OH 45433–5006, Attn: Capt Andy Roake, Chief, Community Relations Division.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and collection instruments, please write to the above address, or call the Headquarters Air Force Materiel Command (HQ AFMC) Community Relations Division at (937) 257–7618.

Title, Associated Form, and OMB Number: Good Neighbor Survey, OMB Number 0701–0131.

Needs and Uses: The information collection instrument is necessary to provide: (a) the general public an instrument to interface with Air Force Materiel Command Community Relations Divisions located at 14 installations across the United States; (b) individual AFMC Public Affairs Offices feedback about the ongoing, perceived relationship between their base and individuals in surrounding communities; and (c) HQ AFMC a tool to measure the overall impact of its community relations programs and help plan future activities.

Affected Public: General population civilian, active-duty, and retired military individuals.

Annual Burden Hours: 56 Hours.

Number of Respondents: 700 per annum.

Responses per Respondent: 1.

Average Burden per Respondent: .08 hour.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals expressing their perceptions about the ongoing relationship between their communities and AFMC bases at 14 locations across the United States. The information obtained will be used to assess the effectiveness of current community relations activities and plan future efforts, to ensure that all AFMC installations maintain their ''Good Neighbor'' status accordingly.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–4899 Filed 2–26–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy, DoD

Notice of Closed Meeting of the Board of Visitors to the United States Naval Academy

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that a special committee of the Board of Visitors to the United States Naval Academy will meet on February 27, 1997, at the United States Naval Academy, Annapolis, MD, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve ongoing criminal investigtions, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Under Secretary of the Navy has determined in writing that the special committee meeting shall be closed to the public because the meeting will be concerned with matters outlined in section 552(b)(2), (5), (6), and (7) of title 5, United States Code. Due to a delay in Administrative Processing the normal 15 days notice requirement could not be met.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant

Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated: February 24, 1997.

Donald E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4935 Filed 2–26–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 28, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director, Information Resources Management Group publishes this 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 at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 21, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Extension.

Title: Directory of Teacher Shortage Subject Areas for the Federal Perkins Loan Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 2,127.

Abstract: The Higher Education Act (HEA) of 1992 (Pub. L. 201–325) enacted provisions for Federal Perkins Loan borrowers to have their loans canceled when they teach in any field of expertise that is determined by the State education agency to have a shortage in certain subject areas.

[FR Doc. 97–4821 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 31, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director of the Information Resources Management Group publishes this 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 at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 21, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 4,800.

Burden Hours: 80,298.

Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1998–99 Award Year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 1996–97 Award Year, and as part of the institutional funding process.

Office of the Under Secretary

Type of Review: New.

Title: Congressionally Mandated Study of Migrant Student Participation in Title I Schoolwide Programs.

Frequency: One Time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,315.

Burden Hours: 1,498.

Abstract: Congress required a study of services to migrant children in schoolwide projects. This study uses school surveys, case studies, and document reviews to meet that requirement. A final report will be submitted to Congress in December 1997.

[FR Doc. 97–4822 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; ED.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATE: March 6–8, 1997.

TIME: *March 6*—Achievement Levels Committee, 3:00 P.M.—5:00 P.M., (closed); Nominations Committee, 3:00 P.M.—5:00 P.M. (closed) and 7:00 P.M.—9:00 P.M., (closed); Executive Committee, 5:00 P.M.—6:00 P.M. (open); 6:00 P.M.—7:00 P.M., (closed). *March 7*—full Board, 8:30 A.M.—10:00 A.M., (open); Subject Area Committees #1 and #2 in joint session, 10:00 A.M.—12:30 P.M., (open); Design and Methodology Committee and Reporting and Dissemination Committee, 10:00 A.M.—11:00 A.M., (open); Design and Methodology Committee and Reporting and Dissemination Committee in joint session, 11:00 A.M.—12:30 P.M. (open); Full Board 12:30 P.M.—2:45 P.M. (closed), 2:45 P.M.—4:00 P.M. (open). *March 8*—Full Board, 9:00 A.M.—11:45 A.M., (open), 11:45 A.M.—12:00 Noon, (closed).

LOCATION: The Francis Marion Hotel; 387 King Street; Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On March 6, from 3:00—5:00 P.M., there will be a closed meeting of the Achievement Levels Committee. The Committee will discuss results of the current 1996 science level-setting activities and review the current analysis of data and proposed exemplar items. This meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. The Nominations Committee will meet in closed session from 3:00 P.M.–5:00 P.M. and 7:00 P.M.–9:00 P.M. These sessions must be closed because the committee will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Also on March 6, the Executive Committee will meet in a partially closed session. During the open portion of the meeting, 5:00 P.M.—6:00 P.M., the Committee will hear an update on the NAEP redesign policies and review the proposed schedule of assessments. The Committee will then meet in closed session from 6:00 P.M.—7:00 P.M. to discuss the development of cost estimates for NAEP and future contract initiatives. This portion of the meeting must be closed because public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

On March 7, the full Board will convene in open session at 8:30 A.M. The agenda for this session of the full Board meeting includes approval of the agenda, the Executive Director's Report, a presentation on assessment in South Carolina, and an update on NAEP. Between 10:00 A.M. and 12:30 P.M. there will be a joint meeting (open) of Subject Area committees #1 and #2. In this joint meeting, the Committees will discuss the status of the 1997 assessments, upcoming item reviews for 1998, and various assigned issues related to NAEP redesign.

The Design and Methodology Committee and the Reporting and Dissemination Committee will each meet in open session from 10:00 A.M.–11:00 A.M. The Design and Methodology Committee will formally approve technical design changes to be implemented in the 1998 assessment and discuss issues pertaining to the redesign of NAEP.

The Reporting and Dissemination Committee will discuss the plan for the

release of the 1996 NAEP Science Report Card, review the release of the Mathematics Report Card, and have an update on the TIMSS–NAEP link.

The Design and Methodology Committee and the Reporting and Dissemination Committee will then meet jointly in open session from 11:00 A.M.–12:30 P.M. to discuss sampling and reporting of students with disabilities and limited English proficiency, oversampling and reporting of private schools in 1998 state NAEP, and working definitions of market basket, standard, and comprehensive reports.

The full Board will reconvene in closed session, beginning at 12:30 P.M., to hear a briefing on the 1996 NAEP Science Report, and to have a presentation on and discussion of science achievement levels. This part of the meeting must be conducted in closed session because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. From 2:45 P.M. until 4:00 P.M., the meeting will be open to the public. During this portion of the meeting, the Board will take action on science achievement levels and hear the highlights of committee discussions on redesign issues.

On March 8, the full Board will meet from 9:00 A.M. until adjournment at approximately 12:00 noon. From 9:00 A.M. until 11:45 A.M., the Board will meet in open session to hear reports on redesign issues and committee reports. These committees are—Subject Areas #1 and #2 (combined), Achievement Levels, Reporting and Dissemination and Design and Methodology (individually and combined), and Executive.

From 11:45 A.M. until 12:00 noon, the Board will meet in closed session to hear the report of the Nominations Committee. This session must be closed because the Board will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this meeting because of delays in the receipt of data necessary to the closed session deliberations of the Committees and the full Board.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Date:

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–4941 Filed 2–26–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, March 11, 1997: 6:30 p.m.–9:30 p.m.; 8:00 p.m. to 8:15 p.m. (public comment session).

ADDRESSES: New Mexico Highlands University (Ask for the Sala De Madrid), Las Vegas, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800) 753–8970, or (505) 753–8970, or (505) 262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Tuesday, March 11, 1997.

6:30 p.m.—Call to Order and Welcome
7:00 p.m.—Old Business
8:00 p.m.—Public Comment
8:15 p.m.—New Business
9:30 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC, on February 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4842 Filed 2–26–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, March 15, 1997, 8:30 a.m.–12:30 p.m.; (public comment session: 12:15 p.m.–12:30 p.m.).

ADDRESSES: The Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross,

Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:45— Chair's Remarks and New Business
8:45–9:15—Report of Transportation and Natural Resources Committees
9:15–10:15—Update on Silos; Results of the Independent Review Team
10:15–10:30—Break
10:30–11:30—Budget and Schedule Issues Planning
11:30–12:15—Discussion of GAO Report
12:15–12:30—Opportunity for Public Input
12:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, March 15, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC, on February 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4843 Filed 2–26–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–5–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective April 1, 1997:

Sub First Revised Sheet No. 714

Algonquin states that this filing is made in compliance with Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions, and all parties on the RP97–5–000 service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4815 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–24–000]

American REF–FUEL Company of Hempstead; Notice of Application

February 21, 1997.

Take notice that on February 21, 1997, American REF–FUEL Company of Hempstead (Hempstead) filed an application, under § 204 of the Federal Power Act, seeking authorization to assume an obligation as a guarantor in connection with the issuance of long-term series 1997 Bonds (1997 Bonds) in an aggregate principal amount of $246,805,000 by the Town of Hempstead Industrial Development Agency (Agency).

The 1997 Bonds are being issued to refund all outstanding bonds issued by the Agency in 1985. Pursuant to a Lease Guaranty and Security Agreement, Hempstead has guaranteed the payment of the principal of, premium, if any, and interest on the 1997 Bonds. Hempstead's payment obligation is, however, limited to the amount that Hempstead is required to make as lease payments under the Lease Agreement between Hempstead and the Agency. Hempstead has also pledged, assigned, and granted a security interests to Chase Manhattan Bank, as Trustee, in all of Hempstead's right, title and interest in the Service Agreement, Energy Purchase Agreement, and the Company Support Agreement.

Any person desiring to be heard or to protest said 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 March 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4816 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 96–403–003]

ANR Pipeline Company; Notice of Proposed Reconciliation

February 21, 1997.

Take notice that on February 10, 1997, ANR Pipeline Company (ANR) tendered for filing a proposed reconciliation of its Viking Transportation Costs with Viking revenues recovered in base rates as required by Commission order in Docket No. RP96–403, *et al.* issued December 12, 1996. In addition, ANR proposes that the over-collection of Viking costs in base rates for the period November 1, 1995 through October 31, 1996 be refunded in Docket No. RP94–43–000 pursuant to a final determination by the Commission in that proceeding. ANR proposes to accrue interest on such over-collections which will be taken into account in determining lawful refunds at the conclusion of the rate case.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4812 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–213–004]

Columbia Gas Transmission Corporation; Notice of Amendment to Application

February 21, 1997.

Take notice that on February 18, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, to amend its application for a certificate of public convenience and necessity previously filed with the Commission on February 28, 1996, in Docket No. CP96–213–000, and amended June 7, 1996 in Docket No. CP96–213–001 for its Market Expansion Project as supplemented on March 18, 1996, April 30, 1996, August 9, 1996.

Columbia's February 28, 1996 application sought a certificate of public convenience and necessity authorizing construction to provide 506,795 dekatherms per day (dth/d) of additional daily firm entitlements to its customers over a three-year period beginning in 1997. Specifically, Columbia sought authority to: (i) increase the performance capabilities of certain existing storage fields; (ii) construct and operate, upgrade, and replace certain natural gas facilities; (iii) abandonment certain natural gas facilities and certain base storage gas; and (iv) such other authorizations and/or waivers as may be deemed necessary to implement Columbia's Project.

On January 16, 1997 the Commission issued a Preliminary Determination On Non-Environmental Issues, which determined that a certificate of public convenience a necessity should be issued to Columbia authorizing it to construct and operate the Expansion Project facilities, subject to the environmental review of the proposal and the issuance of the final order.

By this amendment Columbia now proposes to refine certain of its facility construction proposals. Columbia also proposes one additional measurement construction project and two additional abandonments, the details of which are set forth in this second amendment. The facility modifications are the result of further detailed design analysis of the proposed projects by Columbia's engineering staff. Columbia represents that the modifications do not represent a significant change in any of the design or operating aspects of Columbia's Market Expansion Project nor will there be a material impact on the overall project costs or the rolled-in rate impact of the project costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4802 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–250–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, NorAm Gas Transmission Company (NGT) 1600 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to Sections 157.205 and 157.211 of the Regulations (18 CFR Sections 157.205 and 157.211) under its blanket certificate in Docket Nos. CP82–384–000 and CP82–384–001 to construct and operate certain facilities in Arkansas to deliver gas to ARKLA, a distribution division of NorAm Energy Corp., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to construct and operate a new 1-inch domestic delivery tap on NGT's Line AM–22 in Hot Springs County, Arkansas to provide service to ARKLA. NGT will own and operate the tap.

NGT states that the estimated volumes to be delivered through the above facilities are 730 MMBtu annually and 2 MMBtu on a peak day. The facilities will be constructed at an estimated cost of $1,750, which ARKLA will reimburse NGT for all costs.

NGT states that it will transport gas to ARKLA and provide service under its tariff, that the volumes delivered are

within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest.

If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4806 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–248–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–248–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery tap in Fillmore County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate the proposed delivery tap, consisting of a hot tap and valve, to accommodate natural gas deliveries to UtiliCorp United Inc. (UCU) for redelivery to Forest Resource Center. Northern states that UCU will install, own, and operate all facilities located downstream of Northern's tap. UCU, Northern states, has requested the new delivery tap to provide service to FRC's nature camp located near Lanesboro, Minnesota. The estimated volumes delivered to UCU at the FRC delivery tap will be 600 MMBtu peak day and 5,600 MMBtu annually. The estimated cost for delivery tap installation is $15,000 and UCU will reimburse Northern the installation costs.

Northern states that the proposed delivery tap is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers. The proposed delivery tap will not have an effect on Northern's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4805 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–4–003]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub First Revised Sheet No. 339

Panhandle asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4814 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES97–13–001]

South Carolina Electric & Gas Company; Notice of Amended Application

February 21, 1997.

Take notice that on February 13, 1997, South Carolina Electric & Gas Company (SCG&E) filed an amendment to its application in Docket No. ES97–13–000, under § 204 of the Federal Power Act. By letter dated December 26, 1997, (77 FERC ¶ 61,198), SCG&E was authorized to issue unsecured short-term notes, from time to time, in an aggregate principal amount of not more than $200 million outstanding at any one time during the period January 1, 1997 through December 31, 1998 with a final maturity date no later than 12 months from the date of issuance. SCG&E now requests that the authorization be amended to raise the limit on short-term borrowings from $200 million to $250 million.

Any person desiring to be heard or to protest said 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 February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4807 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–247–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–247–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to operate existing delivery point facilities constructed under the authorization of Section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Hart and Marion Counties, Kentucky, for Part 284 transportation services by Tennessee, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to operate the existing facilities, which were installed in 1996 and consist of 2 hot taps and approximately 320 feet of 12-inch piping at the Monroe SMS Delivery Point in Hart County and 2 hot taps and measurement facility at the Calvary Delivery Point in Marion County to make deliveries of gas transported under Tennessee's Part 284 blanket certificate. It is asserted that the proposal would enable Tennessee to fully utilize the facilities for all transportation under Section 311 of the NGPA and Section 7 of the NGA and would increase the transportation options of customers on Tennessee's system.

It is stated that the proposal is not prohibited by Tennessee's existing tariff and would have no adverse impact on Tennessee's peak day or annual deliveries. It is further stated that Tennessee has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Tennessee's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4804 Filed 2–26–97; 8:45 am]

BILLIING CODE 6717–01–M

[Docket No. RP97–3–003]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub First Revised Sheet No. 681

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Texas Eastern states that copies of this filing were served on firm customers of Texas Eastern, interested state commissions, current interruptible customers and all parties on the service list.

Any person desiring protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 11, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4813 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97–11–000]

Texas Gas Transmission Corporation; Notice of Amendment

February 21, 1997.

Take notice that on February 13, 1997, Texas Gas Transmission Corporation (Texas Gas) amended its February 3, 1997 revised standards of conduct to incorporate changes to its list of marketing affiliates.

Texas Gas states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 10, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4808 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–255–000]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1997.

Take notice that on February 18, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective March 20, 1997:

Second Revised Sheet No. 103
First Revised Sheet No. 113
First Revised Sheet No. 200
First Revised Sheet No. 262

Original Sheet Nos. 263 and 264

TransColorado states that the above tariff sheets are being filed to implement a negotiated/recourse rate program for TransColorado's transportation services as contemplated by the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should 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 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4819 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–6–003]

Trunkline Gas Company; Notice of Compliance Filing

February 21, 1997.

Take notice that on February 18, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective April 1, 1997:

Sub Original Sheet No. 242A

Trunkline asserts that the purpose of this filing is to comply with the Commission's Order No. 587–B, Standards for Business Practices of Interstate Natural Gas Pipelines issued on January 30, 1997 in Docket No. RM96–1–003 by incorporating by reference into its Tariff the Electronic Delivery Mechanism Standards promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–B.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rule and Regulations. All such protests must be filed on or before March 11, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4817 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–245–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

February 21, 1997.

Take notice that on February 14, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in the above docket, a request pursuant to Sections 157.205 and 157.212(a) and 157.216(b) of the Commission's Regulations, for authorization to relocate and replace the Heartland Cement Company (Heartland) meter and regulatory setting, and, after the relocation, to abandon by sale to Heartland approximately 950 feet of 6-inch lateral pipeline, all located in Montgomery County, Kansas, under the authorization issued to WNG in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

WNG states that the projected volume of delivery is not expected to exceed the current delivered volume. The estimated cost of construction is $56,154. WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4803 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–225–027, et al.]

Chicago Energy Exchange of Chicago, et al.; Electric Rate and Corporate Regulation Filings

February 21, 1997.

Take notice that the following filings have been made with the Commission:

1. Chicago Energy Exchange of Chicago, DC Tie, Inc., Energy Resource Marketing, Inc., IGI Resources, Inc., Enerconnect, Inc., and LS Power Marketing, Inc.

[Docket Nos. ER90–225–027, ER91–435–021, ER94–1580–009, ER95–1034–006, ER96–1424–002, and ER96–1947–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 10, 1997, Chicago Energy Exchange of Chicago filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000.

On February 3, 1997, DC Tie, Inc. filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER94–435.

On February 10, 1997, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994, order in Docket No. ER94–1580–000.

On February 10, 1997, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On February 10, 1997, Enerconnect, Inc. filed certain information as required by the Commission's June 10, 1996, order in Docket No. ER96–1424–000.

On January 30, 1997, LS Power Marketing, Inc. filed certain information as required by the Commission's August

5, 1996, order in Docket No. ER96–1947–000.

2. Northern Indiana Public Service Company

[Docket No. ER97–458–001]

Take notice that on January 31, 1997, Northern Indiana Public Service Company tendered for filing its revised compliance filing of the Power Sales Tariff.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. NXIS, LLC

[Docket No. ER97–778–000]

Take notice that on February 7, 1997, NXIS, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas & Electric Company

[Docket No. ER97–1356–000]

Take notice that on January 22, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Detroit Edison Company

[Docket No. ER97–1366–000]

Take notice that on February 13, 1997, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER97–1507–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the fourth quarter of 1996 pursuant to the Commission's order issued January 10, 1997 in Docket No. ER96–2775–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER97–1524–000]

Take notice that on January 31, 1997, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 344, FERC Rate Schedule No. 248.30, and all supplements thereto.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–1536–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Electric Clearinghouse, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1537–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Wisconsin Electric Power Company.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–1538–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and the Michigan Companies.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER97–1540–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and American Electric Power Company, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER97–1541–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and American Electric Power Company, Inc.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER97–1542–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and the Michigan Companies.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER97–1570–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and PanEnergy Power Services Corp. under Rate GSS.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–1574–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and Morgan Stanley Capital Group under LG&E's Rate Schedule GSS.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corporation

[Docket No. ER97–1575–000]

Take notice that on February 7, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Southern Energy Trading and Marketing, Inc. and TransCanada Energy Ltd., (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of February 8, 1997 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER97–1576–000]

Take notice that on February 7, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between each of the following entities and Idaho Power Company: The Power

Company of America, L.P.; Enron Power Marketing, Inc.; Washington Water Power; Aquila Power Corporation; Citizens Lehman Power Sales.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER97–1577–000]

Take notice that on February 7, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Okanogan PUD and Idaho Power Company and a second Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between McMinnville Water & Light and Idaho Power Company.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER97–1578–000]

Take notice that on February 5, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Commonwealth Edison (CE); East Kentucky Power Cooperative (EKPC); Florida Power & Light Company (FPL); The Power Company of America, L.P. (PCA); and WPS Energy Services, Inc. (WPS) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon CE, EKPC, FPL, PCA, and WPS and the South Carolina Public Service Commission.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER97–1579–000]

Take notice that on February 6, 1997, Illinois Power Company (''Illinois Power''), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Union Electric will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 9, 1997.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. San Diego Gas & Electric Company

[Docket No. ER97–1580–000]

Take notice that on February 6, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notice of Termination for the Coordination Agreement (Agreement) between SDG&E and Associated Power Services, Inc., (SDG&E Rate Schedule FERC No. 111). Termination of the Agreement is to be effective as of the 13th day of February 1997. SDG&E request waiver of the applicable notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and PanEnergy Trading and Market Services, L.L.C.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER97–1581–000]

Take notice that on February 6, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing unexecuted Service Agreements between Virginia Electric and Power Company and (1) Federal Energy Sales, Inc., (2) Consumers Power Company dba Consumers Energy Company and The Detroit Edison Company (the Michigan Companies), and (3) Illinova Power Marketing under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to (1) Federal Energy Sales, Inc., (2) the Michigan Companies, and (3) Illinova Power Marketing under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Michigan Public Service Commission.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southwestern Public Service Company

[Docket No. ER97–1582–000]

Take notice that on February 6, 1997, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule for service to Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects two new delivery points for service to Central Valley.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Delmarva Power & Light Company

[Docket No. ER97–1583–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Company

[Docket No. ER97–1584–000]

Take notice that on February 10, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. American Electric Power Service Corporation

[Docket No. ER97–1585–000]

Take notice that on February 7, 1997, The American Electric Power Service Corporation (AEPSC), tendered for filing an executed service agreement with Tennessee Valley Authority under the AEP Companies' Power Sales Tariffs. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the Service Agreement to be made effective for service billed on and after January 10, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER97–1586–000]

Take notice that on February 10, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Green Mountain Power Corporation (Green Mountain). Boston Edison requests that the Service Agreement become effective as of February 1, 1997.

Edison states that it has served a copy of this filing on Green Mountain and the Massachusetts Department of Public Utilities.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power & Light Company

[Docket No. ER97–1587–000]

Take notice that on February 10, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Wisconsin Electric Power Company for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on March 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: March 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said 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 18 CFR 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4912 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1177–000, et al.]

Global Energy Services, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Global Energy Services, LLC

[Docket No. ER97–1177–000]

Take notice that on January 31, 1997, Global Energy Services, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. MG Electric Power, Inc., Vitol Gas and Electric, L.L.C., Cenerprise, Alliance Strategies Incorporated, Wickford Energy Marketing, L.C., PennUnion Energy Services, LLC, USGen Power Services, L.P.

[Docket Nos. ER93–839–004, ER94–155–016, ER94–1402–011, ER95–1381–005, ER95–1415–002, ER95–1511–004, and ER95–1625–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 28, 1997, MG Electric Power, Inc,. filed certain information as required by the Commission's October 19, 1993, order in docket No. ER93–839–000.

On February 11, 1997, Vitol Gas and Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994, order in docket No. ER94–155–000.

On February 4, 1997, Cenerprise filed certain information as required by the Commission's December 7, 1994, order in docket No. ER94–1402–000.

On February 11, 1997, Alliance Strategies Incorporated filed certain information as required by the Commission's August 25, 1995, order in docket No. ER94–1381–000.

On February 11, 1997, Wickford Energy Marketing, L.C. filed certain information as required by the Commission's October 25, 1995, order in docket No. ER94–1415–000.

On January 13, 1997, PennUnion Energy Services, LLC filed certain information as required by the Commission's September 11, 1995, order in docket No. ER95–1511–000.

On February 3, 1997, USGen Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in docket No. ER95–1625–000.

3. Midcon Power Services Corp., Coastal Electric Services Company, Citizens Lehman Power Sales, Kimball Power Company, DuPont Power Marketing, Inc. USGen Power Services, L.P., Coral Power, L.L.C.

[Docket No. ER94–1329–010, ER94–1450–013, ER94–1685–011, ER95–232–009, ER95–1441–008 ER95–1625–008, and ER96–25–005, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 30, 1997, Midcon Power Services Corp. filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On January 30, 1997, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On January 30, 1997, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94–1685–000.

On January 13, 1997, Kimball Power Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–232–000.

On January 31, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 3, 1997, USGen Power Services, L.P. filed certain information as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

On January 31, 1997, Coral Power, L.L.C. filed certain information as required by the Commission's December 6, 1995, order in Docket No. ER96–25–000.

4. Utility 2000 Energy Corp. Wilson Power & Gas Smart, Inc., Utility Trade Corp., Energy Transfer Group, L.L.C., Global Petroleum Corp., South Carolina Electric & Gas Company

[Docket No. ER95–187–007, ER95–751–008, ER95–1382–006, ER96–280–004, ER96–359–006, and ER96–1085–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 13, 1997, Utility 2000 Energy Corp. filed certain information

as required by the Commission's December 29, 1994, order in Docket No. ER95–187–000.

On January 13, 1997, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 24, 1994, order in Docket No. ER95–751–000.

On January 13, 1997, Utility Trade Corp. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1382–000.

On January 15, 1997, Energy Transfer Group, L.L.C. filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–280–000.

On February 4, 1997, Global Petroleum Corp. filed certain information as required by the Commission's December 20, 1995 order in Docket No. ER96–359–000.

On February 3, 1997, South Carolina Electric & Gas Company filed certain information as required by the Commission's May 13, 1996, order in Docket No. ER96–1085–000.

5. Kansas City Power & Light Company

[Docket No. ER97–1263–000]

Take notice that on January 16, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 18, 1996, between KCPL and WPS Energy Services Inc. KCPL proposes an effective date of December 18, 1996, and requests wavier of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and WPS Energy Services Inc.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. TPC Corporation

[Docket No. ER97–1457–000]

Take notice that on January 29, 1997, TPC Corporation tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment date: March 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1508–000]

Take notice that on January 31, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedule FERC No. 92 and FERC No. 96.

The proposed supplement No. 11 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $10,899,000 annually based on the 12-month period ending March 31, 1998.

The proposed supplement No. 10 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 6 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Utility Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), increase the rates and charges for the service by $50,000 annually based on the 12-month period ending March 31, 1998.

The proposed increases are a part of a Company-wide general electric rate change application which Con Edison filed to implement rates for the third year of a multi-year rate plan previously approved by the New York Public Service Commission (NYPSC) and which is pending before the NYPSC.

Although the proposed supplements bear a nominal effective date of April 1, 1997, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1997, of the rate changes, if any, authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: March 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER97–1527–000]

Take notice that on February 3, 1997, Kansas City Power & Light Company (KCPL), tendered for filing, as an initial rate schedule a Service Agreement for Firm Transmission Service (FTS) for a wholesale transaction with Duke/Louis Dreyfus. This Service Agreement is pursuant to the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1543–000]

Take notice that on February 3, 1997, Duquesne Light Company (Duquesne), tendered for filing proposed changes in its Rate Schedule FPC No. 11. The proposed changes extend the period for giving notice of termination under the Municipal Resale Service contract and add an explicit stranded cost provision.

The changes are necessary to allow the Borough of Pitcairn, Pennsylvania (Pitcairn), Duquesne's jurisdictional customer under the rate schedule, to give notice of termination on May 3, 1997. Because the amendment will constitute a ''new'' contract under Order 888, the amendment also contains an explicit stranded cost provision that will apply if Pitcairn gives notice to terminate the contract prior to 2005. Copies of the filing were served upon Pitcairn and the Pennsylvania Public Utility Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER97–1552–000]

Take notice that on February 3, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 27, 1997 with DuPont Power Marketing, Inc. (DUPONT) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds DUPONT as a customer under the Tariff.

PECO requests an effective date of January 27, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to DUPONT and to the Pennsylvania Public Utility Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Union Electric Company

[Docket No. ER97–1553–000]

Take notice that on February 3, 1997, Union Electric Company, tendered for filing a proposal for providing a sharing credit to its Wholesale Electric Service Customers, the Cities of California, Centralia, Farmington, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; City of Jackson, Missouri.

Said credit follows a credit to the Company's Missouri retail customers and is being applied to the Company's wholesale customers following Section 2 of said Wholesale Electric Service Agreements (and Item 3 for the City of Jackson).

Copies of the filing were served upon the public utility's jurisdictional customers and the Missouri Public Service Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER97–1554–000]

Take notice that on February 4, 1997, Otter Tail Power Company (OTP), tendered for filing a transmission service agreement between itself and Otter Tail Power Wholesale Marketing (OTP Wholesale Marketing). The agreement establishes OTP Wholesale Marketing as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that OTP Wholesale Marketing joins in the requested effective date.

Copies of the filing have been served on the Minnesota Public Service Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER97–1555–000]

Take notice that on February 4, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 10, 1997, between KCPL and Sonat Power Marketing L.P. (Sonat). KCPL proposes an effective date of January 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Sonat.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888 in Docket No. OA96–4–000.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER97–1556–000]

Take notice that on February 4, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to PanEnergy Trading and Market Services, L.L.C. (PanEnergy) pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on February 5, 1997.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–1557–000]

Take notice that on February 4, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with The Cleveland Electric Illuminating Company and The Toledo Edison Company pursuant to Ohio Edison System's Power Sales Tariff. These Agreements are designed to permit power transactions under that Tariff.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER97–1558–000]

Take notice that on February 4, 1997, Central Illinois Public Service Company (''CIPS''), submitted Service Agreements establishing Electric Energy, Inc., Sonat Power Marketing L.P., Tennessee Valley Authority and Wabash Valley Power Association, Inc. as new customers under the terms of CIPS' Coordination Sales Tariff CST–1 (''CST–1 Tariff'').

CIPS requests an effective date of January 6, 1997, for the four service agreements and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the four customers and the Illinois Commerce Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company

[Docket No. ER97–1559–000]

Take notice that on February 4, 1997, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) (collectively, the Companies) each tendered for filing Service Agreements establishing Entergy Power Marketing Corp., City of Garland, Texas, WPS Energy Services, Tenaska, Inc., and NGTS Energy Services as customers under the terms of each Company's CSRT–1 Tariff.

The Companies request an effective date of January 6, 1997, for each of the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the five customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1560–000]

Take notice that on February 4, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and The Empire District Electric Company, Southern Energy Trading and Marketing, Inc., Aquila Power Corporation, and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective as follows: The Empire District Electric Company, January 27, 1997; Southern Energy Trading and Marketing, Inc., January 24, 1997; Aquila Power Corporation, January 16, 1997; Duke/Louis Dreyfus L.L.C., January 30, 1997.

Copies of the filing were served upon The Empire District Electric Company, Southern Energy Trading and Marketing, Inc., Aquila Power Corporation, and Duke/Louis Dreyfus L.L.C., and the Kansas Corporation Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER97–1561–000]

Take notice that on February 4, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Delmarva Power & Light Company. This Transmission Service Agreement specifies that Delmarva Power & Light Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July

9, 1996, will allow NMPC and Delmarva Power & Light Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Delmarva Power & Light Company as the parties may mutually agree.

NMPC requests an effective date of January 28, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Delmarva Power & Light Company.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ER97–1562–000]

Take notice that on February 4, 1997, Ogden Martin Systems of Fairfax, Inc. (''Ogden Fairfax''), tendered for filing with the Federal Energy Regulatory Commission an Amendment to its Rate Schedule No. 1 accepted by the Commission on January 11, 1988 in Docket No. ER88–48–000. The changes made to the rates, terms and conditions of service result in a decrease in the payment by Virginia Electric Power Company (''Virginia Power'') for energy. Ogden Fairfax also requests waiver of the 60-day notice period so that the Amendment may be accepted effective December 1, 1996.

Copies of this filing have been served on Virginia Power and on the Virginia State Corporation Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER97–1564–000]

Take notice that on February 5, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER97–1565–000]

Take notice that on February 6, 1997, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Non-Firm Transmission Service Agreements with Sonat Power Marketing L.P. (Sonat) dated January 10, 1997, and Illinois Power Company (Illinois Power) dated January 13, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 10, 1997, for the Agreement with Sonat, and January 13, 1997 for the Agreement with Illinois Power, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Sonat, Illinois Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Interstate Power Company

[Docket No. ER97–1567–000]

Take notice that on February 7, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Transmission Service Agreement, IPW will provide firm point-to-point transmission service to WPL.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Company

[Docket No. ER97–1568–000]

Take notice that on February 7, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and The Power Company of America, L.P. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to The Power Company of America, L.P.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas and Electric Company

[Docket No. ER97–1569–000]

Take notice that on February 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and South Carolina Electric & Gas Company under LG&E's Rate Schedule GSS.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Amoco Energy Trading Corporation

[Docket No. ER97–1571–000]

Take notice that on February 3, 1997, Amoco Energy Trading Corporation (AETC), tendered for filing its Request to Revise FERC Electric Rate Schedule No. 1.

The purpose of this filing is to revise AETC's Rate Schedule consistent with the Commission's current policy concerning transactions between a power marketer and corporate affiliates of the power marketer. Because AETC is not affiliated with a public utility, the proposed revision to AETC's Rate Schedule deletes the existing prohibition on affiliate sales.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Public Service Company

[Docket No. ER97–1572–000]

Take notice that on February 5, 1997, Central Illinois Public Service Company (CIPS), submitted four service agreements, dated between January 20, 1997 and January 24, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: American Municipal Power-Ohio, Inc., Coastal Electric Services Company, Southern Energy Trading and Marketing, Inc. and VTEC Energy, Inc.

CIPS requests an effective date of January 20, 1997 for these service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the foregoing customers and the Illinois Commerce Commission.

Comment date: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–1573–000]

Take notice that on February 6, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 20 to add five (5) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of February 5, 1997, to American Electric Power Service Corporation, Atlantic City Electric Company, PECO Energy Company—Power Team, Potomac Electric Power Company, and Wisconsin Electric Power 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: March 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said 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 18 CFR 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4913 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11077–014]

Alaska Power and Telephone Company; Notice of Availability of Environmental Assessment

Februry 21, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Goat Lake Hydroelectric Project. The application is to modify the project by extending the access road to the bottom of the Skagway River Valley, relocating the powerhouse to the west side of the river, extending the transmission line, realigning the penstock route, and deleting the 125-foot-long spillway and burying the siphon. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Goat Lake Project is located on Pitchfork Falls, near the town of Skagway, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Public Reference Branch, Room 1C–1, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4811 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–687–000]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Athens Compressor Station Project

February 21, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) that discusses the environmental impacts of the construction and operation of the facilities proposed in the Athens Compressor Station Project in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the project, with appropriate mitigating measures would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the construction and operation by Iroquois Gas Transmission System, L.P. (Iroquois) of 9,500 horsepower of compression at the proposed Athens Compressor Station in Greene County, New York.

The purpose of the compressor station is to provide additional firm transportation capacity of up to 30 million cubic feet per day of natural gas to two shippers.

The EA has been placed in the public files of the FERC and is available for inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First St., NE., Room 2A–1, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, adjacent landowners, and parties to this proceeding. A limited number of additional copies are available from the above address.

Any party wishing to comment on the EA may do so. Written comments must be received by March 21, 1997, reference Docket No. CP96–687–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4801 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. 2299–037]

Turlock Irrigation District and Modesto Irrigation District; Notice of Availability of Environmental Assessment

February 21, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application for an amendment of license for the new Don Pedro Project. The amendment of license application concerns changes to project transmission lines, including the addition of a section of existing transmission line within the project boundary. The EA finds that approval of the application would not constitute a major federal action significant affecting the quality of the human environment. The New Don Pedro Project is located in Tuolumne County, California.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE. Washington, DC 20426. Copies can also be obtained by calling the project manager, Jon Cofracesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4810 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP97–168–000 and CP97–169–000]

Alliance Pipeline L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Alliance Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

February 21, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Impact Statement (EIS) that will address the environmental impacts of the construction and operation of approximately 887 miles of natural gas transmission pipeline, seven compressor stations, metering and delivery facilities, and other appurtenant facilities proposed in the Alliance Pipeline Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

Summary of the Proposed Project

Alliance Pipeline L.P. (Alliance) wants to build new natural gas pipeline transmission facilities in North Dakota, Minnesota, Iowa and Illinois with an initial capacity to transport 1.3 billion cubic feet per day of natural gas from Canada to interconnections with existing natural gas pipeline systems in the Chicago, Illinois area. Alliance requests Commission authorization, in Docket No. CP97–168–000, to construct and operate the following facilities:

- 887 miles of 36-inch-diameter mainline pipeline extending from the border of the United States (U.S.) and Canada near Sherwood, Renville County, North Dakota, to a point near Joliet, Will County, Illinois. Of the 887-mile-long mainline, about 324 miles would be in North Dakota, 252 miles would be in Minnesota, 189 miles would be in Iowa, and 122 miles would be in Illinois.
- Seven new compressor stations with a total of 320,000 horsepower (hp) of compression:

—Towner Compressor Station (40,000 hp) in McHenry County, North Dakota.
—Wimbledon Compressor Station (40,000 hp) in Barnes County, North Dakota.
—Fairmount Compressor Station (40,000 hp) in Richland County, North Dakota.
—Olivia Compressor Station (40,000 hp) in Renville County, Minnesota.
—Albert Lea Compressor Station (40,000 hp) in Freeborn County, Minnesota.
—Manchester Compressor Station (40,000 hp) in Delaware County, Iowa.
—Tampico Compressor Station (80,000 hp) in Whiteside County, Illinois.

- Five new meter stations located in Grundy and Will Counties, Illinois, and a new measurement and pressure control station located in Grundy County, Illinois.
- A total of 1.1 mile of 36-inch-diameter pipeline connecting Alliance's proposed meter stations with existing natural gas pipeline facilities in Grundy and Will Counties, Illinois.
- Associated pipeline facilities, including 47 mainline block valves, seven internal tool launchers/receivers, and permanent access roads for access to compressor stations and valves. Communication and electric service facilities associated with the compressor stations may also be required.

In addition, Alliance requests in Docket No. CP97–169–000 a Presidential Permit authorizing construction, operation and maintenance of facilities at the International Border for the importation of natural gas. These facilities would consist only of the portion of the mainline extending across the border and will be evaluated in the EIS as part of the facilities described above.

In connection with the facilities proposed by Alliance, a natural gas liquids (NGL) extraction plant would be constructed near Morris, Illinois by Aux Sable Liquid Products L.P. The purpose of the NGL plant would be to extract ethane and other natural gas liquids that may be present in Alliance's gas stream. For the purpose of comprehensive environmental review, the NGL extraction plant will be included within the scope of the EIS.

Alliance also plans to construct a 982-mile-long natural gas pipeline system in Canada extending from gas production areas in western Canada to the U.S./Canadian border where it would connect with Alliance's proposed facilities in the U.S. However, environmental review of the Canadian portion of the project will not be included in our EIS.

The location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Construction of the Alliance Pipeline Project facilities would affect a total of about 13,312 acres. Of this total, about 11,313 acres would be disturbed by construction of the pipeline. Approximately 814.1 miles (90 percent) of the new pipeline be installed parallel to various existing pipeline rights-of-way occupied by other pipelines. Alliance's pipeline would deviate from the existing rights-of-way in several locations to avoid environmental or engineering constraints or reduce the total length of new pipeline required. Alliance would generally use a right-of-way width for construction of 105 feet, with provisions for extra temporary work areas for waterbody, highway and railroad crossings, additional topsoil storage, and pipe and equipment yards.

Following construction and restoration of the right-of-way and temporary work spaces, Alliance would retain a 60-foot-wide permanent pipeline right-of-way. Existing land uses on the remainder of the disturbed areas, as well as most land uses on the permanent right-of-way, would be allowed to continue following construction. Total land requirements for the permanent right-of-way would be about 6,449 acres.

The extra work areas and aboveground facilities, including compressor and meter stations, internal tool launchers/receivers, and permanent access roads would affect approximately 1,999 acres of land during construction. Mainline valves would be built within or adjacent to the permanent right-of-way. No locations have been identified for the communication and electrical service facilities.

The NGL extraction plant would be located on a 100-acre parcel currently occupied by an abandoned synthetic natural gas plant owned by Northern Illinois Gas Company.

The EIS Process

The National Environmental Policy ACt (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. We encourage state and local government representatives to notify their constituents of this proposed action and encourage them to comment.

[1] Alliance Pipeline L.P.'s applications were filed with the Commission under Sections 3 and 7 of the Natural Gas Act and Part 157 of the Commission's regulations on December 24, 1996.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Alliance. These issues are listed below. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

- Soils.

—Temporary and permanent impacts on prime farmland soils.
—Mixing of topsoil and subsoil during construction.
—Compaction of soil by heavy equipment.
—Impacts on drain tiles and irrigation systems.
—Erosion control and restoration of the right-of-way.

- Water Resources.

—Crossing of 616 waterbodies, canals and drainages.
—Crossing of 11 rivers or canals 100 feet wide or greater, including the James, Chippewa, Minnesota, Bois de Sioux, Wapsipinicon, Mississippi, Rock, Fox and Des Planes rivers, and the Illinois and Michigan Canals.
—Potential for erosion and sediment transport to the waterbodies.
—Effect of construction on groundwater and surface water supplies.
—Impact on wetlands.

- Biological Resources.

—Effect on wildlife and fisheries habitats.
—Effect on federally listed endangered and threatened species.

- Cultural Resources.

—Impact on historic and prehistoric sites.
—Native American and tribal concerns.

- Socioeconomics.

—Effect of the construction workforce on demands for services in surrounding areas.
—Impact on property values.

- Land Use.

—Impact on crop production and grazing.
—Impact on residential areas.
—Effect on public lands and special use areas, including: Rural Economic and Community Development Services areas, a state game refuge, and several proposed segments of the North Country National Scenic Trail in North Dakota; a National Waterfowl Production Area, Seven Mile Creek County Park, East Minnesota River State Game Refuge, Sakatah Singing Hills River State Trail, and Lyle-Austin Wildlife Management Area in Minnesota; Price Wildlife Habitat in Iowa; and Camp Hauberg, Hennepin Canal Parkway State Park, Fox River Natural Area, and Illinois and Michigan Canal National Heritage Corridor and State Trail in Illinois.
—Impact on future land uses.
—Visual effect of the aboveground facilities on surrounding areas.

- Air Quality and Noise.

—Impact on local air quality and noise environment during construction.
—Impact on local and regional air quality and local noise environment from operation of new compressor stations and the NGL extraction plant.

- Reliability.

—Assessment of hazards associated with natural gas pipelines, and natural gas liquids extraction operations.

- Cumulative Impact.

—Assessment of the combined effect of the proposed project with other projects, including other natural gas transmission lines, which have been or may be proposed in the same region and similar time frames.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service lists for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to all comments received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Reference Docket Nos. CP97–168–000 and CP97–169–000.
- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.
- Label *one* copy for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Please mail your comments so that they will be received in Washington, DC on or before March 28, 1997.

In addition to or in lieu of sending written comments, you are invited to attend one of the four public scoping meetings being held in the project area. Meetings will be held at the following times and locations:

March 17, 1997

7:00 pm—Chieftain Motor Lodge, (701) 652–3131, Highway 281, Carrington, North Dakota

March 18, 1997

7:00 pm—Mankato Civic Center, (507) 389–3000, One Civic Center Plaza, Mankato, Minnesota

March 19, 1997

7:00 pm—Falcon Civic Center, (319) 334–2606, 1305 5th Avenue, N.E., Independence, Iowa

March 20, 1997

7:00 pm—Days Inn, (815) 875–3371, (formerly Lincoln Inn), 2238 North Main Street, Princeton, Illinois

The purpose of the scoping meetings is to obtain information from state and local governments and from the public. Federal agencies have formal channels for participating in the process as cooperating agencies (including separate meetings, where appropriate). Federal agencies are expected to file their written comments directly with the FERC and not use the scoping meetings for this purpose.

Alliance will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. A transcript will be made of the meetings and the comments will be made part of the Commission's record in this proceeding.

We are asking a number of federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies'

responsibilities. The list of agencies is provided in appendix 2.[2]

On the above dates we will also be conducting limited site visits to the project area in the vicinity of each scoping meeting location. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs, identified at the end of this notice, for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings, known as an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties on the Commission's service lists for these proceedings. If you want to become an intervenor, you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in these proceedings has passed, having ended January 29, 1997. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. However, you do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project.

Anyone offering scoping comments will be automatically kept on our environmental mailing list for this project. If you do not want to offer comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Environmental Mailing List Information (appendix 4). If you do not return the card you will be taken off the mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4914 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, Room 2A, or call (202) 208–1371. Copies of the appendices were 2A, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Notice of Plan To Provide Additional Recreation Facilities

February 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Filing: Plan to Provide Additional Recreation Facilities.

b. Project Name and No: Mottville Hydroelectric Project, FERC Project No. 401–019.

c. Date Filed: July 19, 1996.

d. Licensee: Indiana Michigan Power Company.

e. Location: St. Joseph River in St. Joseph County, Michigan near Mottville.

f. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. Licensee Contact: William Vineyard, Associate Manager, Fossil and Hydro, Operations, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215–2373, (614) 223–1702.

h. FERC Contact: Steve Naugle, (202) 219–2805.

i. Comment Date: March 31, 1997.

j. Description of the filing: The licensee proposes to add the following recreation improvements at the project: (1) reservoir and tailwater boat launch facilities, a parking area, and associated road and pathway extensions at Mottville Canoe Park; and (2) parking and picnic areas and fishing access at the project powerhouse.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

B. 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.

C1. 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. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4809 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP–97–225–000]

Williams Natural Gas Company; Notice of Technical Conference

February 21, 1997.

In the Commission's order issued on February 7, 1997,[1] in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Tuesday, March 11, 1997 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

[1] 78 FERC ¶ 61,112 (1997).

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4818 Filed 2–26–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5695–6]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the Ventura County Air Pollution Control District (APCD) in Ventura, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit Ventura County APCD to keep the financial assistance awarded to it by EPA for FY–96 under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 31, 1997.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the Ventura County APCD, whose jurisdiction includes Ventura County in southern California, to aid in the operation of its air pollution control programs. In FY–96, EPA awarded the Ventura County APCD $1,398,500, which represented approximately 22% of Ventura's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA Section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR section 35.210(a).

In its FY–96 Section 105 application, which EPA reviewed in early 1996, the Ventura County APCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $4,905,690. This projected MOE was not sufficient to meet the MOE requirements of the CAA, i.e. it was not equal to or greater than the MOE for the previous year (FY–95), which was $4,928,948 according to the Financial Status Report (FSR) for FY–95. Furthermore, in January of 1997 the Ventura County APCD submitted to EPA the FSR for FY–96, which shows that the actual FY–96 MOE was $4,588,325. This amount represents a shortfall of $340,623 from the MOE for FY–95. In order for the Ventura County APCD to be eligible to keep its FY–96 grant, EPA must make a determination under § 105(c)(2).

The Ventura County APCD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the ''unit of Government'' for § 105(c)(2) purposes. The reason for the lower MOE level in FY–96 is a series of efficiencies that Ventura County APCD has implemented. Ventura has provided to Region 9 documentation which shows that it has been able to reduce its administrative expenditures in its programs through cost saving measures which do not affect the performance of its air programs or reduce its expenditures for substantive environmental program activities. For example, Ventura has reduced indirect costs paid to the County by $95,000 and reduced the need for outside contracts by $70,000 by getting weather forecast information free from the Internet. These cost saving measures were taken not because fee revenues had declined, but because Ventura wanted to operate more efficiently.

Fee revenues in Ventura APCD are, however, projected to decrease significantly over the next few years because emissions will decrease. In order to avoid a future shortfall in revenue, Ventura has taken the savings generated by the efficiencies and placed them in a savings or dedicated reserve account. This account is dedicated to support only the District's air program, and would be used to cover shortfalls in meeting its MOE requirement in future years, as needed.

Consistent with the 105 program requirements, Ventura will not use federal funds to supplant local funds that are currently available for the program. The district will continue to operate its program at its current level as long as the fee revenues continue at their present pace. If the revenues drop, the district will tap the savings or reserve account to supplement fee revenue losses.

In summary, Ventura County APCD's MOE reductions resulted from a series of efficiency measures and the district has created a strategy to offset projected future loss of fee revenues with current savings. EPA proposes to determine that the Ventura County APCD's lower FY–96 MOE level meets the Section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR Section 35.210, this determination will allow the Ventura County APCD to keep the funds received from EPA for FY–96.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 31, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 31, 1997.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the Federal Register, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: February 11, 1997.

David P. Howekamp,

Director, Air and Toxics Division, U.S. EPA, Region 9.

[FR Doc. 97–4891 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5695–5]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 2 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register.

DATES: Comments on the exemptions proposed by this action must be received on or before March 31, 1997 or 30 days after publication of a similar notice in a local newspaper.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4, 100 Alabama St., SW, Atlanta, Georgia. *Comments.* Send comments to: Winston Smith, Director, Air, Pesticides and Toxics Management Division (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, EPA Region 4, (404) 562–9127.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's Federal Register.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4892 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5695–4]

Acid Rain Program: Notice of Direct Final Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain permitting and monitoring requirements to 2 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on April 8, 1997 or 40 days after publication of a similar notice in a local newspaper, whichever is later, unless significant, adverse comments are received by March 31, 1997 or 30 days after publication of a similar notice in a local newspaper, whichever is later. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the Federal Register.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4 Library, Atlanta Federal Center, 100 Alabama St., SW, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, EPA Region 4,(404) 562–9127.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's Federal Register and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from Phase II permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements.

While the exempt retired units have been allocated allowances under 40 CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA is issuing written exemptions from Phase II permitting requirements and monitoring requirements, effective from January 1, 1997, through December 31, 2001, to the following retired units:

Avon Park unit 2 in Florida, operated by Florida Power Corporation. The designated representative for Avon Park is W. Jeffrey Pardue.

Cane Run unit 3 in Kentucky, operated by Louisville Gas and Electric Company. The designated representative for Cane Run is Chris Hermann.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4893 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140252; FRL–5590–6]

Access to Confidential Business Information by ICF International, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, and 6 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–D5–0147, contractor ICF, of 9300 Lee Highway, Fairfax, VA, and 1850 K St., NW., Suite 1000, Washington, DC, will assist the Office of Pollution Prevention and Toxics (OPPTS) in the evaluation of joint PMN and Section 612 Clean Air Act requirements. The evaluation will analyze risk factors on intrinsic hazards, exposure, and use patterns of the alternatives on new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D5–0147, ICF will require access to CBI submitted to EPA under sections 4, 5, and 6 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, and 6 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of November 1, 1991 (56 FR 56216; FRL–3999–6), under contract number 6–D8–0116, ICF was authorized for access to CBI submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, and 6 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ICF's site located at 9300 Lee Highway, Fairfax, VA and 1850 K St., NW, Washington, DC. Before access to TSCA CBI is authorized at ICF's site, EPA will approve ICF's security certification statements to ensure that the facilities are in compliance with the manual.

ICF will be authorized access to TSCA CBI at its facilities under the EPA *TSCA Confidential Business Information Security Manual.* Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2000.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4882 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140253; FRL–5590–7]

Access to Confidential Business Information by Science Applications International Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Science Applications International Corporation (SAIC), of McLean, Virginia, access to information which has been submitted to EPA under sections 4, 5, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–D4–0098, contractor SAIC, of 1710 Goodridge Drive, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in reviewing industry data for chemical composition, production volume, and toxicological effects to identify and reduce regulatory barriers to innovation in developing and commercializing new chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D4–0098, SAIC will require access to CBI submitted to EPA under sections 4, 5, 8, and 12 of TSCA to perform successfully the duties specified under the contract. SAIC personnel will be given access to information submitted to EPA under sections 4, 5, 8, and 12 of TSCA. Some of the information may be claimed or determined CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 8, and 12 of TSCA that EPA may provide SAIC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1997.

SAIC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4883 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5695–7]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; in re: Old Southington Landfill Superfund Site; Southington, Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed relocation response cost agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve liability under CERCLA of the Town of Southington, Connecticut for costs incurred or to be incurred by EPA in relocation of residences located on the Old Southington Landfill Superfund Site in Southington, Connecticut.

DATES: Comments must be provided on or before March 31, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: Agreement for Payment of Relocation Response Costs Re: Old Southington Landfill Superfund Site, Southington, Connecticut, U.S. EPA Docket No. CERCLA–I–97–1013.

FOR FURTHER INFORMATION CONTACT: Marcia J. Lamel, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3435.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 et seq., notice is hereby given of a proposed cost recovery settlement agreement under section 122(h) of CERCLA concerning the Old Southington Landfill Superfund Site in Southington, CT. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice. The Town of Southington, Connecticut has executed a signature page committing it to participate in the settlement. Under the proposed settlement, the Town of Southington will pay $400,000 to the EPA Hazardous Substance Superfund to fund the cost of relocation of residences located on the Old Southington Landfill Superfund Site. Relocation of the residences is necessary in order to implement remedial action selected by EPA in a Record of Decision issued on September 22, 1994. The selected interim remedy for limited source control includes constructing a cap over the Site and removing all residential and commercial structures from the Site. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 122(h) which provides EPA with authority to consider, compromise, and settle a claim under Section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has given written approval of this settlement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Marcia J. Lamel, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–3435.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–1013).

Dated: February 13, 1997.

Linda M. Murphy,

Director of the Office of Site Remediation and Restoration.

[FR Doc. 97–4888 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44636; FRL–5589–8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on pharmacokinetics and subchronic toxicity of n-butyl acetate (CAS No. 123–86–4). The pharmacokinetics test is the last study in a neurotoxicity testing program conducted in rats which was required under an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). The subchronic toxicity test is a 13–week study, also in rats, which was conducted and submitted to EPA voluntarily. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for the pharmacokinetics of n-butyl acetate were submitted by the Chemical Manufacturers Association (CMA) on behalf of the following sponsors: Aristech Chemical Company, BP Chemicals, Inc., Hoechst Celanese Corporation, Shell Oil Company, Vista Chemical Company, BASF Corporation, Eastman Chemical Company, Rhone-Poulenc, Inc., and Union Carbide Corporation. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on January 24, 1997. The submission includes a final report entitled ''The In Vivo Pharmacokinetics of n-Butyl Acetate in Rats after Intravenous Administration.'' This chemical is used as a solvent for coatings, as a process solvent, and for other miscellaneous solvent uses.

Test data for the subchronic toxicity of n-butyl acetate were submitted by the Chemical Manufacturers Association Oxo Process Panel on behalf of the following sponsors: Aristech Chemical Corporation, BASF Corporation, BP Chemicals, Inc., Eastman Chemical Company, Hoechst Celanese Chemical Group, Inc., Shell Chemical Company, and Union Carbide Corporation. EPA received the data on January 6, 1997. The submission is entitled ''A Thirteen-Week Subchronic Inhalation Toxicity Study of n-Butyl Acetate in the Rat.''

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44636). This record includes a copy of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, e-mail address: oppt.ncic@epamail.epa.gov., 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 18, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4880 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44637; FRL–5589–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on cyclohexane (CAS No. 110–82–7). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association (CMA) on behalf of the following test sponsors, which comprise the CMA Cyclohexane Panel: Chevron Chemical Company, CITGO Refining Chemicals Inc., E.I. du Pont de Nemours Company, Huntsman Corporation, Koch Industries Inc., Phillips Petroleum Company, and Sun Company, Inc. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on January 21, 1997. The submission includes a final report entitled ''Inhalation Developmental Toxicity Study of Cyclohexane in Rats.'' This chemical is found in a number of consumer products including spray paint and spray adhesives. It is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44637). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, e-mail address: oppt.ncic@epamail.epa.gov., 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 18, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–4881 Filed 2–26–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 authority, Comments Requested

February 21, 1997.

SUMMARY The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before April 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0506.

Title: Application for FM Broadcast Station License.

Form Number: 302-FM.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, state, local or tribal government.

Number of Respondents: 750.

Estimated time per response: 4 hours (0.167–0.5 hours respondent; 0–0.5 hours for an attorney; 3.25 hours for a consulting engineer).

Total annual burden: 439 hours.

Needs and Uses: Licensees and permittees of FM broadcast stations are required to file FCC Form 302–FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission will be adding the antenna registration information that was approved by OMB under control number 3060–0714 to this form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–FM for inclusion in the subsequent license to operate the station.

OMB Approval Number: 3060–0029.

Title: Application for TV Broadcast Station License.

Form Number: 302-TV.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 77.

Estimated time per response: 20 hours (1.5 hours respondent/18.5 hours consulting engineer).

Total annual burden: 113 hours.

Needs and Uses: Licensees and permittees of TV broadcast stations are required to file FCC Form 302–TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission will be adding the antenna registration information that was approved by OMB under control number 3060–0714 to this form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4911 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Review

February 21, 1997.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of this collection by February 28, 1997, under the provisions of 5 CFR Section 1320.13.

Federal Communications Commission.

OMB Control No.: 3060–0536.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Action: Revised Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 5000 respondents; 3.1 hours per response (avg.); 15593 hours total annual burden.

Needs and Uses: Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules that require the provision of TRS service beginning July 26, 1993. The Commission set minimum standards for TRS providers and established a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission also appointed the National Exchange Carrier Association (NECA) the TRS Fund administrator, and directed NECA to establish a non-paid, voluntary advisory committee to monitor cost recovery matters.

The Commission's rules require all carriers providing interstate telecommunications services to contribute to the TRS Fund. The amount contributed is the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. Contributions are calculated in accordance with a TRS Fund Worksheet which is prepared each year by the Commission and published in the Federal Register. Payments from the fund are made to eligible TRS providers and are designed to cover the reasonable costs incurred in providing interstate TRS service. The TRS Fund administrator files a proposed payment formula and estimated fund requirements with the Commission each year, and this payment formula is subject to Commission approval. See 47 CFR § 64.601-64.608 for rules and requirements governing telecommunications relay services. On December 17, 1996, the Commission's Common Carrier Bureau released an order approving the contribution factor for the April 1997 through March 1998 contribution period and the 1997 TRS Fund Worksheet (FCC Form 431) and also making several revisions to the form.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4910 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–F

Sixth Meeting of the WRC–97 Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–97 Advisory Committee will be held on Wednesday, March 5, 1997 at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1997 World Radiocommunication Conference.

DATES: March 5, 1997; 9:30 am–11:30 am.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Crystal Foster, FCC International Bureau, Satellite and Radiocommunication Division, at (202) 418–0749.

SUPPLEMENTARY INFORMATION:

1. The Federal Communications Commission (FCC) established the Advisory Committee for the 1997 World Radiocommunication Conference to provide advice, technical support and recommendations relating to the preparation of recommended United States proposals and positions for the 1997 World Radiocommunication Conference (WRC–97). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–97 Advisory Committee.

2. This meeting will continue reviewing the work of the Advisory Committee. The draft conference proposals developed by the Committee's Ad Hoc and Informal Working Groups (IWGs) will be considered for approval.

3. The WRC–97 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. Further information regarding the WRC–97 Advisory Committee is available on the World Wide Web at: http://www.fcc.gov/ib/wrc97/.

4. The proposed agenda for the sixth meeting is as follows:

Agenda—Sixth Meeting of the WRC–97 Advisory Committee

Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

March 5, 1997; 9:30 a.m.–11:30 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Administrative Matters & Approval of Minutes
4. Update on NTIA Radiocommunication Conference Subcommittee
5. Reports on Significant International Meetings
6. Reports from the Chairs of the Informal and Ad Hoc Working Groups & Consideration/Approval of Draft Proposals
7. Advisory Committee Schedule
8. Other Business

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–4908 Filed 2–26–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: *97–0357.*

PREVIOUSLY ANNOUNCED DATE & TIME:

Tuesday, February 11, 1997 at 10:00 a.m.

MEETING CLOSED TO THE PUBLIC

This meeting was rescheduled for Thursday, February 13, 1997, to convene following the open meeting.

Thursday, February 13, 1997

The open and executive sessions were cancelled.

DATE & TIME: *Tuesday, March 4, 1997 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, March 6, 1997 at 10:00 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Lenora B. Fulani for President—Statement of Reasons (LRA #451).

Advisory Opinion 1996–46: Socialist Workers Party (''SWP'') and SWP National Campaign Committee by counsel, Michael Krinsky and Michael Ludwig.

Advisory Opinion 1997–02: Representatives David E. Skaggs and Ray LaHood by counsel, Jan Witold Baran and Robert F. Bauer.

Final Rules Implementing the Debt Collection Improvement Act of 1996.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 97–5072 Filed 2–25–97; 3:02 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1166–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 1, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ronald Bearse of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of John Swanson as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–4921 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1155–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1155–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

The counties of Kings and San Luis Obispo for Individual Assistance, Hazard Mitigation and Public Assistance. Federal assistance to replace trees is not eligible.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4922 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1154–DR]

Idaho; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1154–DR), dated January 4, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Idaho,

is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 4, 1997:

The counties of Benewah and Kootenai for Hazard Mitigation and Categories C, D, E, F, and G under the Public Assistance program. Federal assistance to replace trees is not eligible. (These counties have already been designated for Individual Assistance and Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4920 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1158–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1158–DR), dated January 16, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 16, 1997:

FEMA will provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities for the counties of Hubbard, McLeod, Meeker, Sibley, Sherburne, Stearns, Todd, Waseca, and Wright.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4916 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02—M

[FEMA–1153–DR]

Nevada; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nevada (FEMA–1153–DR), dated January 3, 1997, and related determinations.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curt Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Warren Pugh as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–4919 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1160–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1160–DR), dated January 23, 1997, and related determinations.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1997:

The counties of Coos, Douglas and Lane for Individual Assistance and Hazard Mitigation.

Lake County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, DisasterAssistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4918 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1997:

The county of Clark for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

The counties of Douglas and Franklin for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4915 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1159–DR), dated January 17, and related determinations.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 10, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4917 Filed 2–26–97; 8:45 am]

BILLING CODE 6718–02–M

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. Once the notices have been accepted for processing, they will also 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 March 19, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Mr. O. H. Deshotels, Jr., Kaplan, Louisiana; to acquire an additional 2.9 percent, for a total of 12.6 percent, of the voting shares of Coastal Commerce Bancshares, Inc., Kaplan, Louisiana, and thereby indirectly acquire Kaplan State Bank, Kaplan, Louisiana.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4828 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

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. Once the application has been accepted for processing, it will also 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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 March 24, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. AmeriBancShares, Inc., Wichita Falls, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of AmeriBancShares of Delaware, Wilmington, Delaware, and thereby indirectly acquire American National Bank, Wichita Falls, Texas.

2. AmeriBancShares of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4829 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Shoreline Financial Corporation, Benton Harbor, Michigan; to acquire SJS Bancorp, Inc., St. Joseph, Michigan, and thereby indirectly acquire SJS Federal Savings Bank, St. Joseph, Michigan, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y and in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4830 Filed 2–26–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT SUPERVISION INVESTMENT BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Retirement Thrift Investment Board.

TIME AND DATE: 9:00 a.m., March 10, 1997.

PLACE: National Finance Center, First Floor, Conference Room 6, USDA/NFC Building No. 350, NASA Space Facility, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 10, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Briefings by National Finance Center and Board staff on:
   a. National Finance Center;
   b. Thrift Savings Plan system replacement effort;
   c. Thrift Savings Plan improvements;
   d. Capability maturity model;
   e. Software methodology;
   f. Project tracking and controls;
   g. Service Office enhancements;
   h. Local area network; and
   i. Thrift Savings Plan costs.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: February 24, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–5013 Filed 2–25–97; 11:37 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95P–0110]

The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a document entitled ''Good Guidance Practices'' (GGP's), which sets forth the agency's policies and procedures for the development, issuance, and use of guidance documents. Issues relating to FDA's development and issuance of guidance documents were raised in a citizen petition submitted by the Indiana Medical Devices Manufacturers Council, Inc. (IMDMC) (see Docket No. 95P–0110). In an effort to improve its guidance document procedures, FDA has adopted the GGP's described and included in this notice.

DATES: Although the agency already has begun to follow the procedures set forth in the GGP's, the GGP's will not be fully implemented until FDA's proposal to amend its regulations in part 10 (21 CFR part 10) to clarify that advisory opinions and guidelines do not bind the agency (57 FR 47314, October 15, 1992) is finalized and in effect.

FOR FURTHER INFORMATION CONTACT: Margaret M. Dotzel, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: The IMDMC petition requested that FDA control the initiation, development, and issuance of guidance documents by written procedures that assure the appropriate level of meaningful public participation. In response to the petition, FDA agreed to take steps to improve the agency's guidance document procedures. In the Federal Register of March 7, 1996 (61 FR 9181), FDA published a notice, which set forth its proposal on how best to improve its guidance document procedures and solicited comment on these and additional ideas for improvement (the March 7 Notice). On April 26, 1996, the agency held a public meeting to further discuss these issues (the April 26 public meeting). The comment period for the March 7 Notice closed on June 5, 1996. This notice: (1) Sets forth the agency's position on how it will proceed in the future with respect to guidance document development, issuance, and use; and (2) includes the agency's GGP's, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents.

I. Definition of Guidance

In the March 7 Notice, FDA provided the following definition for guidance documents:

> [T]he term ''guidance documents'' means: (1) Documents prepared for FDA review staff and applicants/sponsors relating to the processing, content, and evaluation/approval of applications and relating to the design, production, manufacturing, and testing of regulated products; and (2) documents prepared for FDA personnel and/or the public that establish policies intended to achieve consistency in the agency's regulatory approach and establish inspection and enforcement procedures. Guidance documents do not include agency reports, general information provided to consumers, documents relating to solely internal FDA procedures, speeches, journal articles and editorials, media interviews, warning letters, or other communications or actions taken by individuals at FDA or directed to individual persons or firms.

A number of the comments submitted in response to the March 7 Notice suggested alternative definitions for ''guidance document.'' One comment suggested that the term include all internal documents intended to direct activities of FDA staff. Another suggested that a guidance document be defined as any document or other communication that in effect announces a regulatory expectation to a broad audience. And yet another suggested that a guidance document be defined as any statement that may substantively impact a regulatory evaluation or determination.

Documents relating to internal procedures, warning letters, information directed at individuals or individual firms, and speeches, journal articles, editorials, media interviews, press materials, agency reports, and general information documents provided to consumers are not guidance documents. FDA disagrees with suggestions for a definition of guidance documents that would effectively broaden the scope of the term ''guidance document'' to include such documents. Definitions such as ''any document that announces a regulatory expectation,'' ''any statement that may substantively impact a regulatory evaluation or determination,'' or ''any agency-issued writing that establishes methods of compliance'' would include some or all of these excluded documents. A definition such as ''all internal documents that direct activities of FDA staff'' would include all documents relating to internal FDA procedures, even if they have no bearing on the regulated industry. Accordingly, FDA is rejecting these suggestions.

In the GGP document, attached to this notice, the agency is using the same basic definition as set forth in the March 7 Notice, with minor revisions to clarify what is and is not in the universe of guidance documents. It provides:

> The term ''guidance documents'' includes documents prepared for FDA staff, applicants/sponsors, and the public that (1) relate to the processing, content, and evaluation/approval of submissions; (2) relate to the design, production, manufacturing, and testing of regulated products; (3) describe the agency's policy and regulatory approach to an issue; or (4) establish inspection and enforcement policies and procedures. ''Guidance documents'' do not include documents relating to internal FDA procedures, agency reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, warning letters, or other communications directed to individual persons or firms.

Despite the agency's reluctance to broaden the definition of guidance, the agency is sensitive to the concern expressed during the April 26 public meeting and in the comments that too narrow a definition might permit agency employees to use documents or communications such as speeches, editorials, or journal articles to announce regulatory expectations without following the GGP's discussed herein. Although FDA employees should be able to respond to questions about how an established policy applies

to a specific situation or to questions about areas that lack established policy, the agency should not use these other means of communication to release guidance. The GGP's explicitly state that when the agency is first communicating new or different regulatory expectations not readily apparent from the applicable statute or regulations to a broad public audience, the GGP's and officially-designated guidance document procedures should be followed. As part of the agency's effort to monitor the use of guidance documents (see section III. of this document), the agency will spot check its staff to ensure that ''unofficial'' guidance documents or other means (such as speeches) are not being used to first transmit to a broad public audience new or different regulatory expectations that are not readily apparent from the applicable statute or regulations.

II. Nomenclature

In the March 7 Notice, FDA suggested that a standardized nomenclature for guidance might help the public better understand the nature and legal effect of guidance documents and might help to eliminate any confusion regarding which documents are guidance. Both the discussion at the April 26 public meeting and comments submitted to the docket indicated overwhelming support for a standardized nomenclature for guidance documents. Nevertheless, some comments cautioned the agency not to elevate form over substance. Moreover, there was no real consensus on what the standardized nomenclature should be.

Some comments suggested that the nomenclature be based on the intended use of the guidance, (e.g., compliance guidance versus 510(k) review guidance); others suggested that it be based on the intended user (e.g., guidance for industry versus guidance for reviewers). A number of comments suggested that FDA differentiate guidance documents on the basis of their type or function (e.g., educational, interpretive, and descriptive or premarket review, compliance/enforcement, and educational). Some comments even suggested that the distinction be drawn on the basis of what procedure is used to develop the guidance.

Specific suggestions included calling all guidance either ''guidance documents'' or ''compliance policy guides'' or calling all guidance either ''guidelines'' or ''recommendations.'' A number of comments suggested using an umbrella term (such as guidance or guideline) together with additional identifying information, such as the Center producing the document, the intended users, and the industrial, regulatory, or professional activities to which the document applies.

After considering these comments and the universe of guidance documents, the agency has decided that all guidance documents should include the following: (1) The umbrella term ''guidance;'' (2) information that identifies the Center or Office producing the document; and (3) the regulatory activity to which the document applies and/or the intended users of the document. The agency anticipates that, in practice, the majority of guidance documents will be called ''compliance guidance,'' ''guidance for industry,'' or ''guidance for FDA reviewers/staff.'' The agency believes that this approach incorporates a number of the suggestions made during the April 26 public meeting and in the comments and ensures that guidance document nomenclature is uniform and informative (i.e., by identifying the producing Center or Office and the regulatory activity to which and/or the persons to whom the document applies).

One comment suggested that, as an additional means of ensuring uniformity and clarity, FDA should use a consistent format with headed paper for all guidance documents. Given the diversity of guidance documents and the subjects that they address, the agency believes that it would be difficult to use a consistent format. The agency believes, however, that the benefit that might be achieved from a consistent format could be achieved, more easily, by using a standardized cover sheet for all guidance. Therefore, the GGP's include a standardized cover sheet that should be used as a model for all future guidance documents.

Existing Guidance. In response to the agency's request for comment on what to do with existing guidance documents if a standardized nomenclature is adopted, most comments suggested that FDA update the nomenclature as documents are revised. In the meantime, it was suggested that the agency create an interim method of cross-referencing the older documents with the new nomenclature. One comment suggested that the agency agree to undertake the review and revision of all existing guidance within some specified period of time. Specifically, the comment suggested a ''managed review'' approach pursuant to which the agency would set progressive goals, with a defined percentage of the documents to be reviewed for nomenclature changes within a specified period of time (e.g., 25 percent per year for 4 years).

FDA agrees with the majority of comments, which suggested that the best approach would be to update the nomenclature of existing guidance documents as they are revised. In the meantime, when the agency publishes its comprehensive list of guidance (see section V. of this document), it will list guidance documents under the issuing Center or Office and, where possible, will separate guidance documents by their intended users and/or the regulatory activities to which they apply.

The agency will not undertake a ''managed review'' of all existing guidance documents pursuant to which the agency would review a defined percentage of documents for nomenclature changes within a specified period of time. While the agency agrees that guidance documents should be reviewed and updated as appropriate, the agency does not agree that the expenditure of resources for what may be mere name changes is warranted, particularly when those resources could be applied more productively to the development of new guidance documents. Over the past year, the Centers and Offices have been taking stock of their guidance documents and have been identifying obsolete guidance documents as well as those needing updates or revisions. Moreover, as set forth in section IV. of this document, the agency is providing the public an opportunity to identify guidance documents that need to be reviewed/updated. Thus, the agency believes that it is taking steps to ensure that any necessary updates and revisions to guidance documents will be made.

III. Effect of Guidance Documents

The March 7 Notice described the legal effect of guidance documents. Specifically, it stated that a guidance document is not binding on the agency or the public; rather, it represents the agency's current thinking on a certain subject. Most of the participants at the April 26 public meeting and the comments to the March 7 Notice agreed that guidance documents should not be binding. There was significant support for including a statement of the nonbinding effect of guidance on each guidance document and for education (particularly of FDA employees) regarding the legal effect of guidance. A number of comments suggested that the agency monitor FDA employees to ensure that they are not applying guidance as binding.

Nonbinding effect of guidance. Although most comments agreed with the agency's position that guidance should not be binding on the public, a

number did argue that FDA should be required to follow its own guidance (i.e., should not be able to require more than is stated in guidance documents). One comment argued that FDA's position about the nonbinding nature of guidance is inconsistent with its own part 10 regulations.

The only binding requirements are those set forth in the statute and FDA's regulations. Under the Administrative Procedure Act (§ l0.40(d)), in order to bind the public, FDA must (with limited exceptions) follow the notice and comment rulemaking process. Moreover, the principle that guidance documents are binding on FDA is inconsistent with *Community Nutrition Institute* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987), which calls into question FDA's procedures for issuing advisory opinions and guidelines that purport to bind the agency and thereby constrain the agency's discretion. In fact, consistent with the D.C. Circuit's decision in *CNI*, FDA proposed to revise its part 10 regulations to clarify that advisory opinions and guidelines do not bind the agency (57 FR 47314). The agency expects to publish that final rule shortly.[1] The GGP's will not be fully implemented until that final rule is in effect.

Although guidance documents cannot legally bind FDA or the public, the agency recognizes the value of guidance documents in providing consistency and predictability. A company wants assurance that if it chooses to follow a guidance document, FDA generally will find it to be in compliance with the statute and regulations. Moreover, FDA issues guidance to its staff so that they will apply the statute and regulations in a consistent manner. With these principles in mind, FDA's decisionmakers will take steps to ensure that their staff do not deviate from guidance documents without appropriate justification and without first obtaining concurrence from a supervisor. This practice will provide assurance to companies that choose to follow a guidance, yet will not legally bind the agency or its decisionmakers to a guidance document.

The statement of nonbinding effect. In the March 7, 1996 Federal Register Notice, FDA proposed to include language such as the following in each guidance document:

> Although this guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public it does represent the agency's current thinking on * * *.

A number of comments suggested changes to the proposed statement. Some of the recommended changes reflect the comments' position that guidance is binding. Others apparently seek to clarify that approaches other than those set forth in the guidance are permitted if the applicable statutory or regulatory requirements are met. Finally, a number of the comments opined that the statement alone would not ensure the public a real opportunity to rely on alternate methods to comply with the statute and regulations.

As set forth above, FDA disagrees with the concept that guidance documents are binding. In response to the comments regarding flexibility in complying the statute and regulations, FDA is changing the statement to read:

> This guidance document represents the agency's current thinking on * * *. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

In addition, as part of GGP's, the agency is providing an opportunity for discussion regarding alternate methods of complying with the applicable statute and regulations.

Absence of Mandatory Language. Because guidance documents are not binding, the GGP's provide that mandatory words such as ''shall,'' ''must,'' ''require'' and ''requirement'' should not be used unless they are being used to describe or discuss a statutory or regulatory requirement. The GGP's further provide that, prior to issuance, all new guidance documents should be reviewed to ensure that mandatory language has not been used.

Education. In the March 7 Notice, FDA recognized the importance of educating both agency employees and the public regarding the nonbinding nature of guidance. Comments to the March 7 Notice agreed that education is an important step in assuring that guidance is not applied as a binding requirement. The comments suggested that FDA's GGP's include a section that describes the legal effect of guidance.

As part of its GGP's, FDA will provide all current and new FDA employees involved in the development, issuance, or application of guidance documents a copy of the GGP's, which include a section that describes the legal effect of guidance. FDA will direct these employees to review the GGP's and will provide additional training that describes, in more detail, how to develop and use guidance documents.

For purposes of educating the public, the comments suggested education through mailings and public service announcements in trade journals and newsletters. FDA agrees that it is important to take advantage of opportunities to educate the public about the legal effect of guidance. The GGP's and the statement of the nonbinding effect of guidance that will be included in all future guidance documents and on the list of guidance documents (see section V. of this document) should help to educate the public about the legal effect of guidance. In addition, as part of the GGP's, FDA is encouraging its employees to state and explain the effect of guidance when speaking in public about guidance documents. The agency believes that public education efforts will be most effective if targeted to specific discussions of guidance documents.

Monitoring. A number of the participants at the April 26 public meeting and a number of the comments to the March 7 Notice suggested that FDA monitor and evaluate the agency's performance in not applying guidance as binding. The agency agrees that it is important to monitor the agency's use of guidance. Therefore, as a part of GGP's, the Centers and Offices will monitor the development and issuance of guidance documents to ensure that GGP's are being followed. In addition, they will spot-check the use of guidance documents to ensure that they are not being applied as binding requirements and the use of documents and communications that are not defined as guidance, such as warning letters and speeches, to ensure that they are not being used to initially express new regulatory expectations to a broad public audience.

Three years after the GGP's have been implemented, the agency will convene a working group to review whether they have improved the agency's development and use of guidance documents. The working group will determine whether the GGP's are ensuring: (1) Appropriate public participation in the development of guidance, (2) that guidance documents are readily available to the public, and (3) that guidance documents are not being applied as binding requirements. The working group will review the results of the Center and Office monitoring efforts as well as the number and results of appeals relating to guidance documents.

IV. Development/Public Input

In the March 7 Notice, FDA committed to implementing an agency-wide practice of soliciting or accepting

[1] One comment asked FDA to retain § 10.45(d) (21 CFR 10.45(d)) and establish that the agency regards guidance documents as final agency action. FDA believes that this issue is more appropriately addressed in the final rule pertaining to the revisions to the part 10 regulations.

public input in connection with the development of guidance documents. FDA sought comment on a proposed three-tiered system, which encompassed a different approach to public comment for each of the three tiers. For the proposed Tier 1 documents, FDA would notify the public of its intent to issue a guidance and solicit comment before issuing that guidance. In addition, where appropriate (e.g., when complex scientific issues are raised), FDA might also hold a public meeting or workshop to discuss the guidance or could involve advisory committees in the development process. For the proposed Tier 2 documents, FDA would notify the public after it issues the guidance and solicit comment at that time. For the proposed Tier 3 documents, FDA would regularly notify the public of new guidance that recently has been issued and would not specifically solicit comment, but would accept comment.

FDA suggested that whether a guidance would be in Tier 1, 2, or 3 would depend on a number of factors. For example, Tier 1 guidance might be guidance that represents a significant change, is novel or controversial, or raises complex issues about which FDA would like to have significant public input; Tier 2 guidance might be guidance that merely states FDA's current practices or does not represent a significant or controversial change; Tier 3 guidance might be guidance directed largely to FDA's own staff and that has a limited effect on the public.

In the March 7 Notice, the agency opined that an approach such as the three-tiered one would allow it to make public input genuinely meaningful. The agency did not (and does not) want to make a commitment to extensive public participation in the development of large numbers of guidance documents and then find itself unable to issue needed guidance promptly.

Most of the speakers at the April 26 public meeting and many of the comments to the March 7 Notice did not support the agency's proposed three-tiered approach. The major criticisms were that it is too complicated, would not provide sufficient public participation, and would not sufficiently focus on public participation before a decision to issue guidance is made and before a proposed guidance is drafted. Some comments suggested changes to the tiers; others suggested completely different approaches.

Specific Criticism of the Proposed Three-Tiered Approach. A number of the comments on the March 7 Notice opined that FDA's proposed three-tiered approach would be too complex. Many thought that the proposed approach would make the classification itself a separate burden on the agency. Moreover, some thought that the agency's determination of ''significance'' would be problematic. For example, what might appear insignificant to the agency could be significant to the public.

Many of the comments stated that the three-tiered approach would not provide adequate public participation—particularly with respect to Tier 3. In addition, a number of comments criticized FDA's approach for focusing too much on revision of guidance that has already been drafted. These comments noted the importance of allowing participation at the earliest stages of the development process.

One comment opined that because guidance documents are used to explain interpretations of existing requirements, there is no need for an opportunity to comment. Rather, users should be encouraged to provide informal feedback at any time. If all of the public's comments are negative, FDA should consider rewriting the guidance.

Finally, one comment noted that FDA should not use the term ''tier'' because it will lead to confusion with the current ''tier'' system for device section 510(k) submissions.

Suggested Alternatives to the Three-Tiered Approach. Many of the comments agreed with a tiered approach, but suggested different ways of deciding which documents fall into each tier. A number suggested distinguishing between ''educational documents,'' ''interpretive documents,'' and ''descriptive documents.'' Some suggested distinguishing between ''significant public interest documents,'' ''general public interest documents,'' and ''FDA interest only documents.'' Others suggested looking at whether the documents: (1) Represent a significant change in policy, a complex issue, or are new and have wide applicability; (2) involve no significant or controversial changes; or (3) affect only FDA staff and have no effect on the public. A number of comments thought it important for FDA to look at the impact the guidance document has on the industry.

A comparable number of comments disagreed with a tiered approach. For example, one comment suggested that any agency statement having the potential for compliance or enforcement consequences must be subject to notice and comment rulemaking. Product specific guidance (e.g., bioequivalence protocols or biopharmaceutical guidance) alone could be excepted, provided the guidance is binding on FDA and industry unless a clearly demonstrated public health safety issue arises.

Some comments suggested that all guidance be available for comment before issuance through publication in the Federal Register (although an abbreviated procedure could be employed). Under this approach, a reasonable amount of time, at least 60 days, would be allowed for submission of comments.

One comment suggested that advanced public comment always be required except when it would not be in the public interest to wait for advanced public comment. The latter guidance documents would undergo comment after issuance.

Several comments recommended that the agency try processes other than soliciting comment from the public after a guidance document has been drafted. For example, some suggested that the agency employ a negotiated guidance development process, patterned after negotiated rulemaking. Another comment recommended creation of an internal task force to evaluate the agency's management procedures for ensuring consistency in the application of statutes and regulations, identifying interpretations of how to apply the statutes and regulations, and determining when the interpretations should be formed into guidance documents. Another recommended creation of a joint agency-industry committee to coordinate the development, promulgation, issuance, and overall management of guidance documents.

At least one comment suggested that FDA experiment with different models to determine how best to solicit public input in the long run.

In response to the agency's request for comment on how to treat the comments that are submitted for guidance documents, some suggested that all comments be available for public review; others said that it is inappropriate for the general public to have access to comments by named individuals regarding certain issues. Several comments indicated that comments need not be in the public docket. Rather, it would be sufficient to have them sent to the Center or Office issuing the guidance. Most of the comments agreed that it was important that the agency commit that all comments received will be considered, and not just filed.

FDA's Approach. FDA disagrees with many of the suggested alternatives because they fail to recognize that the agency does not have unlimited resources to dedicate to the development of guidance documents.

As set forth in the March 7 Notice, if FDA commits to a development process that is akin to rulemaking, it will not be able to issue many guidance documents. Moreover, what guidance documents could be issued, could not be issued promptly.

FDA disagrees with other suggested alternatives because they appear to be even more complex than FDA's proposed three-tiered approach. For example, under one approach FDA would have to determine whether a document is ''educational,'' ''interpretive,'' or ''descriptive'' before deciding what type of public participation should go into the development process. There is overlap between these different types of guidance documents and would likely be disagreement over the appropriate categorization of a guidance document. Under another suggested approach, FDA would have to look at whether a guidance is of ''significant public interest,'' ''general public interest,'' or ''FDA only interest.'' The latter would require very subjective determinations. Moreover, it is doubtful that many guidance documents would fall outside of the category of ''significant public interest.''

Nevertheless, FDA agrees with some of the criticisms to its proposed three-tiered approach and believes that many of the comments were constructive. As set forth below, FDA is revising its proposed approach to public input to: (1) Simplify it; (2) increase public participation; and (3) ensure that public participation will be at the earliest stages of the process. Moreover, FDA will not use the term ''tier'' in differentiating the degree of public participation.

As part of its GGP's, FDA will adopt a two-level approach. Level 1 documents generally will include guidances directed primarily to applicants/sponsors or other members of the regulated industry that set forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, and highly controversial issues. Level 2 guidance documents will include all other guidances.

For Level 1 guidance, the agency will solicit public input prior to implementation, unless: (1) There are public health reasons for immediate implementation; (2) there is a new statutory requirement, executive order, or court order that requires immediate implementation and guidance is needed to help effect such implementation; or (3) the guidance is presenting a less burdensome policy that is consistent with the public health. In the latter situations, the agency will solicit public input upon issuance/implementation. When the agency determines that even greater public participation is warranted, for example when there are highly controversial or unusually complex new scientific issues, the agency may hold a public workshop to discuss a draft guidance document. In these situations, the agency may also present a draft of the guidance document to an advisory panel.

In an effort to help ensure that public participation will occur at the earliest stages of the guidance development process, the agency is implementing policies pursuant to which the public will have an opportunity to suggest areas for guidance development or revision and to suggest drafts of guidance documents for adoption by the agency. (See ''Proposing New Guidance,'' below.) Through these processes, the agency often will solicit input prior to its decision to issue a guidance and/or prior to the development of a draft.

In addition, FDA may solicit or accept early input on the need for new or revised guidance or assistance on the development of particular guidance documents from individual nongovernmental groups such as consumer groups, trade associations, patient groups, and public interest groups. The agency may participate in meetings with these various parties to obtain each party's views on priorities for developing guidance documents. The agency may also hold meetings and workshops to obtain input from each interested party on the development or revision of guidance documents in a particular FDA subject area.

Comments submitted for Level 1 documents will be submitted to the public docket and will be available to the public for review. The agency will review all comments, but in issuing a final guidance, need not specifically address every comment. The agency will make changes to a guidance document in response to comments as appropriate.

For Level 2 guidance, the agency will provide an opportunity for public comment upon issuance. Unless otherwise indicated, the guidance will be implemented upon issuance. The agency will make changes to Level 2 guidance if comments indicate that such changes are appropriate. Comments submitted for Level 2 guidance documents will be sent directly to the issuing Center or Office. Each guidance will identify the Center or Office to which such comments should be sent. The Center or Office will review all comments and will make changes to the guidance in response to such comments, as appropriate.

For all guidance documents—Levels 1 and 2—comments will be accepted at any time. Guidance will be revised in response to comments, as appropriate. These comments will be submitted to the issuing Center or Office identified in the guidance document.

Public Notification of Proposed/New Guidance Documents. In the March 7 Notice, the agency solicited comment regarding what approach would best ensure that the public is kept apprised of new guidance document developments. Comments responding to the question regarding how best to notify the public and solicit input on proposed or new guidance suggested a variety of vehicles including the Federal Register, the world wide web (WWW), the trade press, trade associations/organizations, public workshops, and grassroots meetings.

In an effort to ensure that notice is provided both electronically and by hard copy, the agency will be providing notice both in the Federal Register and on the FDA WWW home page. FDA has established a home page on the WWW at ''http://www.fda.gov''. Each of the Centers and the Office of Regulatory Affairs also have established home pages, which are linked to the FDA home page. These Center and Office home pages can be accessed directly or by going through the FDA home page. Guidance document notices and/or drafts will be posted on the FDA home page or will be accessible from there.

The availability of all new guidance documents, both Levels 1 and 2, will be posted on the appropriate FDA WWW home page as each guidance is issued. Notices of availability of Level 1 guidance documents will appear in the Federal Register when each new guidance is issued. If several new Level 1 guidance documents are being issued at the same time, a single Federal Register notice may be issued for all of those new documents. The agency will issue Federal Register notices of all new Level 2 guidance documents on a quarterly basis.

Proposing New Guidance. A number of comments on the March 7 Notice suggested that it is more important for the agency to ensure adequate public participation in the process that leads to the development of a guidance document than in the process following the agency's development of a draft guidance. These comments urged the agency to provide a mechanism for the public to recommend subjects for new guidance or drafts of proposed new

guidance documents. One comment suggested utilizing a ''Guidance Proposal Policy'' pursuant to which FDA employees or the public would propose topics for guidance and the proposals would be reviewed and approved/not approved by FDA management. Another comment suggested that a central location, such as a guidance document calendar, be designated for industry to propose new guidance development and to learn of new development activities. One comment suggested that the Centers and Offices solicit comments about the need for guidance through a Federal Register notice. Finally, one suggested that possible topics for development of guidance be published in the agency's annual regulatory agenda.

The agency agrees that it is important to provide for the public's involvement in the process that leads to the development of a draft guidance document. As part of its GGP's, therefore, the agency is instituting procedures for involving the public in decisions to develop or revise guidance documents and prioritize the development and revision of guidance documents. The agency will accomplish this in two ways. First, as a part of its GGP's, the agency will, on a semiannual basis, publish (in the Federal Register and on the FDA WWW home page), possible topics for guidance document development during the next year. At that time, FDA will solicit input from the public regarding these and additional ideas for new guidance documents or guidance document revisions or priorities. The purpose of publishing this ''guidance document agenda'' is to encourage the public to participate in the process that leads to the development of guidance documents. The agency will not be bound by the list of possible topics—i.e., it will not be required to issue every guidance document on the list and it will not be precluded from issuing guidance documents that are not included on the list.

The second way that the agency will involve the public in decisions to develop, revise, or prioritize guidance documents will be to include, as part of its GGP's, a ''Guidance Proposal Policy.'' The ''Guidance Proposal Policy'' will provide the public an opportunity to propose topics for new or revised guidance or to propose draft guidance documents. The guidance proposal policy not only provides the public a meaningful opportunity to participate in the prioritization and development of guidance documents, it also allows the agency to take advantage of outside expertise and resources.

Review and Revision of Guidance Documents. A number of comments to the March 7 Notice suggested that the agency establish periodic review of guidance documents at predetermined intervals and create mechanisms for the public and agency personnel to suggest earlier review. Several comments suggested that a policy should be adopted whereby if a guidance document cannot be reviewed and revised within a reasonable time (e.g., 3 years), it should be deemed obsolete. At least one comment objected to the sunset concept.

FDA agrees that it would be valuable to periodically review and, where appropriate, revise all guidance documents. As a practical matter, guidance documents are regularly used by FDA and thereby undergo an informal review process. The agency's current workload will not permit it to commit to formal strict review/revision deadlines without diverting resources from other tasks. The agency does not think it is in the public's best interest for guidance documents that have not been reviewed or revised within some certain period of time to be deemed obsolete. The result would be to eliminate many current, valuable guidance documents. The agency believes that the guidance proposal policy will help to keep the agency apprised of potentially outdated guidance documents. Thus, as part of its GGP's, the agency is recommending review of existing guidance regularly and when appropriate (e.g., when there are significant changes in the statute or regulations), but it is not adopting a policy whereby certain guidance documents automatically are deemed obsolete with the mere passage of time.

Other Quality Control Measures. A number of the comments suggested additional quality control measures to help improve the quality of guidance. For example, one suggested that the agency adopt a uniform sign-off policy whereby each guidance document has concurrence at least at the level of an Office director. Others suggested that FDA employ other standard elements such as clearly marking superseded and superseding documents, identifying the underlying statutory and regulatory requirements, including a glossary of terminology, cross-referencing other relevant agency publications, and incorporating the following information: Relevant dates (issuance, effective, implementation, review, withdrawal, expiration), status (under development, draft, final), tier, revision history, superseded/superseding documents, available appeals mechanisms, draft number, and a summary/description of the document.

FDA agrees that many of the above standard elements would help to ensure uniformity throughout the agency and to make the documents more useful to the public. The agency thinks that it is important to include the issuance date of a guidance, its status (e.g., draft), and, where applicable, the date of the document's last revisions. When a guidance document supersedes another document, it also is important to identify the document that the new guidance is superseding. In addition, superseded documents that remain available for historical purposes should be stamped or otherwise identified as superseded.

Finally, as part of GGP's, the agency is implementing a uniform sign-off policy that directs that, at a minimum, all Level 1 guidance documents receive the sign-off of an Office Director and Level 2 guidance receive the sign-off of a Division Director. The Office of the Chief Counsel (OCC) will review and sign off on Level 1 guidance documents that set forth new legal interpretations and any other guidance documents that the Office Directors (or other issuing officials) determine should have (OCC) review. The Office of Policy (OP) will review and sign off on Level 1 guidance documents that constitute significant changes in agency policy and any other guidance documents that the Office Directors (or other issuing officials) determine should have OP review.

V. Dissemination/Availability to Public

In the March 7 Notice, FDA solicited comment on how best to provide the public access to guidance documents. FDA's Centers and Offices currently use a variety of mechanisms to make guidance documents available to the public. Nevertheless, many of the comments stated that there is room for improvement in FDA's current access programs.

Guidance Document Lists. In the March 7 Notice, the agency expressed its intent to ensure that all current guidance documents are included on a list and that the public is aware that the list exists. FDA solicited comment on how best to make the list available—electronically, on the established FAX information systems, or in the Federal Register.

Most comments were in favor of one centralized system (with the individual Centers and Offices keeping copies as well); most agreed that the centralized system must include one electronic method and one hard copy method; some urged use of the Federal Register

because it is available electronically and by hard copy.

As part of its GGP's, FDA will make a comprehensive list of all guidance documents available on the FDA WWW home page and in the Federal Register. The WWW list will be updated continuously. The Federal Register list will be published annually and updated quarterly. The quarterly update will list all new guidance documents issued during that quarter and all guidance documents that have been withdrawn during that quarter. The list will include the name of each guidance document, the guidance's issuance/revision dates, and information on how to obtain copies of all of the guidance documents included on the list. The list will be organized by Center and Office and should group guidance documents by their intended users or the regulatory activities to which they apply.

Guidance Documents. In the March 7 Notice, the agency sought comment on the agency's current systems for providing access to the actual guidance documents. Specifically, the agency asked whether the current systems provide adequate access, whether it would be feasible to rely principally on the FAX systems and electronic methods—such as the WWW—or whether hard copies are necessary.

Comments submitted to the docket suggested that improvements could be made to FDA's current access systems. For example, some comments suggested that there were difficulties in using the FAX-ON-DEMAND systems. Others complained that the current systems were not kept up to date.

The Centers and Offices each will retain responsibility for maintaining a comprehensive, current set of their guidance documents and making those guidance documents available to the public. All guidance documents made available by the Centers and Offices should be included on the comprehensive list. To the extent feasible, guidance documents will be made available electronically (e.g., on the WWW). The Centers and Offices will make all guidance documents available in hard copy upon request.

VI. Appeals

In the March 7 Notice, FDA emphasized the importance of an effective appeals mechanism to ensure that there will be full and fair reconsideration and review of how guidance documents are being applied. The agency expressed its belief that an effective appeals process would protect against guidance documents being applied as binding requirements.

Comments submitted to the docket and presentations at the April 26 public meeting indicated that the issue of appeals may not be an appropriate way to address this issue. According to these comments, if the agency involves the public in the development of guidance and takes steps to ensure that its employees do not apply guidance as binding requirements, there would be fewer appeals relating to guidance documents. Nevertheless, a number of comments stated that the public is not sufficiently aware of the agency's current appeals processes and/or that the agency's current appeals processes are not adequate.

The agency agrees that improving the development and use of guidance documents should limit the need for appeals. Nevertheless, the agency believes that an effective appeals mechanism is needed for those times when someone believes the GGP's may not have been followed or the GGP's fail to achieve their purpose. The agency has appeals mechanisms in place. However, there is a lack of knowledge regarding their existence and a lack of clarity about how they work—both of which likely contribute to the criticism that they are inadequate. Accordingly, the agency is including, in its GGP's, a section that describes the appeals mechanisms relating to guidance.

As a general matter, a person with a dispute involving a guidance document can appeal a decision by going up the Center and Office chains of command, which are described in the GGP's. The Office of the Chief Mediator and Ombudsman (the Ombudsman) may be asked to become involved if the matter is not resolved by going up the chain of command, little progress is being made going up the chain of command, or a person does not know where to begin an appeal. The GGP's provide information regarding the Office of the Ombudsman and provide Center- and Office-specific information regarding telephone and/or mail contacts for questions on appeals.

The text of the GGP's document is set forth below.

Dated: February 18, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

Good Guidance Practices

I. Purpose

This ''Good Guidance Practices'' (GGP's) document sets forth FDA's general policies and procedures for developing, issuing, and using guidance documents. The purpose of this document is to help ensure that agency guidance documents are developed with adequate public participation, that guidance documents are readily available to the public, and that guidance documents are not applied as binding requirements. The agency wants to ensure uniformity in the development, issuance, and use of guidance documents.[1]

II. Definition

The purposes of guidance documents are to: (1) Provide assistance to the regulated industry by clarifying requirements that have been imposed by Congress or issued in regulations by FDA and by explaining how industry may comply with those statutory and regulatory requirements and (2) provide specific review and enforcement approaches to help ensure that FDA's employees implement the agency's mandate in an effective, fair, and consistent manner. Certain guidance documents provide information about what the agency considers to be the important characteristics of preclinical and clinical test procedures, manufacturing practices, and scientific protocols. Others explain FDA's views on how one may comply with the relevant statutes and regulations and how one may avoid enforcement actions.

The term ''guidance documents'' includes documents prepared for FDA staff, applicants/sponsors, and the public that: (1) Relate to the processing, content, and evaluation/approval of submissions; (2) relate to the design, production, manufacturing, and testing of regulated products; (3) describe the agency's policy and regulatory approach to an issue; or (4) establish inspection and enforcement policies and procedures. ''Guidance documents'' do not include documents relating to internal FDA procedures, agency reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, warning letters, or other communications directed to individual persons or firms.

III. Legal Effect of Guidance Documents

Guidance documents do not themselves establish legally enforceable rights or responsibilities and are not legally binding on the public or the agency. Rather, they explain how the agency believes the statutes and regulations apply to certain regulated activities. However, because a guidance document represents the agency's current thinking on the subject addressed in the document, FDA's decisionmakers will take steps to ensure that their staff do not deviate from the guidance document without appropriate justification and appropriate supervisory concurrence.

Alternative methods that comply with the relevant statute or regulations are acceptable. If a regulated company or person wishes or chooses to use an approach other than that set forth in a guidance document, FDA will, upon request, discuss with that company or person alternative methods of complying with the applicable statutes and regulations.

[1] This document represents the agency's current practices for developing, issuing, and using guidance documents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Individual FDA Centers or Offices may have additional/more detailed procedures to implement the general principles set forth herein.

FDA encourages industry to discuss alternative approaches with the agency before implementing them to avoid unnecessary or wasteful expenditures of resources.

IV. Application of GGP'S

FDA staff involved in the development, issuance, and application of guidance documents are expected to adhere to these GGP's. Documents and other means of communication excluded from the definition of guidance should not be used to initially communicate new or different regulatory expectations not readily apparent from the applicable statute or regulations to a broad public audience. Whenever such regulatory expectations are first communicated to a broad public audience, these GGP's should be followed. This does not limit the agency's ability to respond to questions as to how an established policy applies to a specific situation or to questions about areas that may lack established policy. However, such questions may signal the need to develop guidance in that area.

V. Procedures for Developing Guidance Documents

FDA has adopted a two-level approach to the development of guidance documents. The procedures for developing a guidance document will depend on whether that guidance document is a ''Level 1'' guidance or a ''Level 2'' guidance. Level 1 guidance documents generally include guidances directed primarily to applicants/sponsors or other members of the regulated industry that set forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, or highly controversial issues. Level 2 guidance documents include all other guidance documents.

Development of Level 1 Guidance Documents. For Level 1 guidance documents, the agency will solicit public input prior to implementation, unless: (1) There are public health reasons for immediate implementation; (2) there is a new statutory requirement, executive order, or court order that requires immediate implementation and guidance is needed to help effect such implementation; or (3) the guidance is presenting a less burdensome policy that is consistent with public health. In the latter situations, the agency will solicit public input upon issuance/implementation.

For Level 1 guidance, the agency will, at a minimum, solicit public input by (1) issuing a notice of availability of a draft of the guidance in the Federal Register and indicating its availability on the appropriate FDA world wide web (WWW) home page [2], and (2) posting the draft on the appropriate FDA WWW home page or making the draft otherwise available. The notice of availability will provide information regarding how to obtain a copy of the draft guidance; hard copies of the draft will be available upon request. The agency may use one Federal Register notice of availability to solicit public input on several different draft guidance documents. For Level 1 guidance documents, the agency also may hold a public workshop to discuss a draft and/or present a draft to an advisory panel when, for example, there are highly controversial or unusually complex new scientific issues.

Because the agency recognizes that it is important to solicit input prior to its decision to issue a guidance and also, perhaps, during the development of a draft of a Level 1 guidance, the agency is implementing various practices to obtain input at the earliest stages of Level 1 guidance document development. For example, these GGP's provide that the public will have an opportunity to comment on and suggest areas for guidance development or revision and to submit draft guidances for possible adoption by the agency. (See the ''Guidance Document Agenda'' and ''Guidance Proposal Policy'' set forth below.)

In addition, FDA may solicit or accept early input on the need for new or revised guidance or assistance in the development of particular guidance documents from individual nongovernmental groups such as consumer groups, trade associations, patient groups, and public interest groups. The agency may participate in meetings with these various parties to obtain each party's views on priorities for developing guidance documents. The agency may also hold meetings and workshops to obtain input from each interested party on the development or revision of guidance documents in a particular FDA subject area.

Comments submitted on draft Level 1 guidance documents will be submitted to the docket identified in the Federal Register notice and on the appropriate FDA WWW home page. All comments will be available to the public for review. The agency will review all comments, but in issuing the guidance, need not specifically address every comment. The agency will make changes to the guidance document in response to comments, as appropriate.

Development of Level 2 Guidance Documents. For Level 2 guidance, the agency will provide an opportunity for public comment upon issuance. Unless otherwise indicated, the guidance will be implemented upon issuance.[3] The availability of new Level 2 guidance documents should be posted on the appropriate FDA WWW home page as each guidance is issued. Each quarter, the agency will publish a list in the Federal Register of all new Level 2 guidance documents.

Comments submitted for Level 2 guidance documents will be sent directly to the issuing Center or Office. Each guidance will identify the Center or Office to which such comments should be sent. The Center or Office will review all comments. The agency will make changes to the guidance in response to comments, as appropriate.

Comments on Guidance Documents In Use. For all guidance documents—Levels 1 and 2—comments will be accepted at any time. Comments on the guidance documents in use should be submitted to the issuing Center or Office identified in the guidance. Guidance will be revised in response to such comments, as appropriate.

Sign-off Policy. All drafts of Level 1 guidance documents that are being made available for public comment will receive the sign-off of at least an Office Director in a Center or the Office of Regulatory Affairs equivalent. All final versions of Level 1 guidance documents will receive the sign-off of at least an Office Director in a Center or the Office of Regulatory Affairs equivalent. The Office of the Chief Counsel (OCC) will review and sign off on Level 1 guidance documents that set forth new legal interpretations and any other guidance documents that the Office Directors (or other issuing officials) determine should have OCC review. The Office of Policy (OP) will review and sign off on Level 1 guidance documents that constitute significant changes in agency policy and any other guidance documents that the Office Directors (or other issuing officials) determine should have OP review. All Level 2 guidance documents will receive the sign-off of an official at the Division Director level or higher. The agency employees with sign-off authority should ensure that these GGP's have been followed whenever a guidance document is issued. If GGP's were not followed, the person with sign-off authority should withdraw the guidance document and reissue it in accordance with GGP's.

Guidance Document Agenda. On a semiannual basis, the agency will publish in the Federal Register and on the FDA WWW home page possible topics for guidance document development or revision during the next year. At that time, the agency will specifically solicit input from the public regarding these and additional ideas for new guidance documents or guidance document revisions or priorities. The agency is not bound by the list of possible topics—i.e., it is not required to issue every guidance document on the list and it is not precluded from issuing guidance documents that are not included on the list.

''Guidance Proposal Policy.'' If a member of the public wishes to propose one or more topics for new guidance or guidance revisions or to propose one or more draft guidance documents for adoption by FDA, that person should submit the proposal to the Centers or Offices with responsibility for overseeing the regulatory activity to which the guidance document would apply. The submission should include a statement regarding why new or revised guidance is necessary.

If the Center or Office agrees that the proposed topic should be covered by a guidance document, it will develop a guidance document in accordance with these GGP's. If the Office or Center agrees that a guidance document should be updated/revised, it will develop a revision in accordance with these GGP's. If the submitter

[2] FDA has established a home page on the WWW at ''http://www.fda.gov''. Each of the Centers and the Office of Regulatory Affairs also have established home pages, which are linked to the FDA home page. These Center- or Office-specific home pages can be accessed directly or through the FDA home page. Guidance document notices and/or drafts will be posted on the FDA home page or will be accessible from there.

[3] The agency may, at the discretion of the issuing Office, solicit comment before implementing a Level 2 guidance document.

has proposed a draft of the guidance document that the agency agrees can form the basis for a guidance document, the agency will follow the GGP's for issuing and implementing a guidance document based on that proposed draft.

Review and Revision of Guidance Documents. The agency intends to review existing guidance documents on a regular basis. As part of the ''Guidance Proposal Policy,'' members of the public may request review or revision of a particular guidance document on the basis that it is no longer current. Such requests should be accompanied by an explanation of why the guidance is out of date and how it should be revised. The agency will review such requests to determine if the guidance document at issue needs to be updated/revised. The Agency will, when appropriate, update or revise that guidance document in accordance with these GGP's. In addition, when significant changes are made to the statute or regulations, the agency will, on its own initiative, review and, as appropriate, revise guidance documents relating to that changed statute or regulation.

VI. Standard Elements

Nomenclature. All guidance documents will include: (1) The umbrella term ''guidance,'' (2) information that identifies the Center or Office producing the document, and (3) the regulatory activity to which and/or the persons to whom the document applies. In practice, the majority of guidance documents issued in the future will be called ''compliance guidance,'' ''guidance for industry,'' or ''guidance for FDA reviewers/staff.''

Statement of Nonbinding Effect. All guidance documents will include language such as the following:

This guidance document represents the agency's current thinking on * * *. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Absence of Mandatory Language. Because guidance documents are not binding, mandatory words such as ''shall,'' ''must,'' ''require'' and ''requirement'' are inappropriate unless they are being used to describe or discuss a statutory or regulatory requirement. Before a new guidance is issued, it should be reviewed to ensure that mandatory language has not been used.

Other Standard Elements. Each guidance document will include the dates of issuance and latest revision. Documents that are being made available for comment should include a ''draft'' notation. When a guidance supersedes another guidance document, the new guidance document will identify the document that it is superseding. Superseded documents that remain available for historical purposes should be stamped or otherwise identified as superseded. All guidance documents should include a cover sheet that is modeled after the samples attached to this document.

The agency will update existing guidance documents (to include these standard elements) as they are revised.

VII. FDA Implementation of GGP's

Education. All current and new FDA employees involved in the development, issuance, or application of guidance documents will be provided a copy of and directed to review the agency's GGP's. The Centers and Offices will conduct additional training of employees involved in the development and use of guidance documents that will describe in more detail how to develop and use guidance documents under these GGP's. This training will emphasize the principles set forth in section III., above, regarding the legal effect of guidance documents.

The agency also will educate the public about the legal effect of guidance. These GGP's and the statement of the nonbinding effect of guidance that will be included in every future guidance document and on the comprehensive list of guidance documents (discussed in section VIII. below) should help to educate the public about the legal effect of guidance. FDA staff should take the opportunity to state and explain the legal effect of guidance when speaking to the public about guidance documents.

Monitoring. FDA will monitor agency employees' use of guidance documents. As part of this process, the Centers and Offices will monitor the development and issuance of guidance documents to ensure that these GGP's are being followed. In addition, they will spot-check the use of guidance documents to ensure that they are not being applied as binding requirements. Finally, the Centers and Offices will spot-check the use of documents and communications that are not defined as guidance, such as warning letters and speeches, to ensure that these documents are not being used to initially express a new regulatory expectation to a broad public audience.

Three years after these GGP's have been implemented, the agency will convene a working group to review whether these GGP's have been successful in achieving the agency's goal in issuing them. The working group will determine whether the GGP's are ensuring: (1) Appropriate public participation in the development of guidance, (2) that guidance documents are readily available to the public, and (3) that guidance documents are not being applied as binding requirements. The working group will review the results of the Center and Office monitoring efforts as well as the number and results of appeals relating to the development and/or use of guidance documents.

VIII. Dissemination/Availability to Public

Lists of Guidance Documents. A comprehensive list of all current guidance documents will be maintained on the FDA WWW home page. New guidance documents should be added to the list within 30 days of issuance. The agency will publish the comprehensive list in the Federal Register annually. Each quarter, the agency will publish a Federal Register notice that lists all guidance documents that were issued during that quarter and all guidance documents that have been withdrawn.

The guidance document lists will include the name of each guidance document, the document's issuance/revision dates, and information on how to obtain copies of the document. The lists will be organized by Center and Office and should group guidance documents by their intended users and/or the regulatory activities to which they apply. The list also will include (properly identified) draft documents being made available for public comment.

Guidance Documents. The Centers and Offices each will retain responsibility for maintaining a comprehensive set of their guidance documents and making those guidance documents available to the public. All guidance documents made available by a Center or Office should be included on the comprehensive list. To the extent feasible, guidance documents will be made available electronically (e.g., on the WWW). The Centers and Offices will make all guidance documents available in hard copy, upon request.

IX. Appeals

These GGP's should improve the agency's development and use of guidance documents. Nevertheless, an effective appeals mechanism is needed for those times when the GGP's may not have been followed or the GGP's fail to achieve their purpose. FDA intends to provide an opportunity for appeal to a person who believes that GGP's were not followed in issuing a particular guidance document or who believes that a guidance document has been treated as a binding requirement.

As a general matter, a person with a dispute involving a guidance document should begin with the supervisor of the person issuing or applying the guidance document. If the issue cannot be resolved at that level, the matter should be brought to the next level. This process would continue on up the chain of command.[4] If a matter is unresolved at the level of the Center Director, or if little progress is being made going through the chain of command, the Office of the Chief Mediator and Ombudsman (the Ombudsman) may be asked to become involved.[5] The Office of the Ombudsman can be reached at 301–827–3390.

The chains of command for such appeals generally are as follows:

Center for Drug Evaluation and Research (CDER)

-Reviewer/Project Manager
-Branch Chief/Team Leader/Supervisory Project Manager
-Division Director
-Office Director

[4] This general agency-wide process for appealing decisions is described in FDA's regulations (21 CFR 10.75).

[5] The Ombudsman reports directly to and acts on behalf of the FDA Commissioner in investigating and resolving issues and problems that affect products under FDA's jurisdiction. The office was created to investigate industry complaints about FDA's regulatory processes, identify deficiencies in those processes, respond to problems affecting a product under FDA's jurisdiction, and ensure that FDA policy is fairly and evenly applied throughout the agency. The Ombudsman also mediates disputes or issues between FDA and the regulated industry that have not been resolved through other means.

-Deputy Center Director
-Center Director

In addition, CDER has its own Ombudsman in the Office of the Center Director (301–594–5443) to help assist with appeals and dispute resolution. Additional information about this office can be found on the CDER home page at ''http://www.fda.gov/cder''.

Center for Biologics Evaluation and Research (CBER)

-Reviewer/Consumer Safety Officer
-Branch Chief/Laboratory Chief
-Division Director
-Office Director
-Associate Director
-Deputy Center Director
-Center Director

In addition, CBER has its own Ombudsman in the Office of the Center Director (301–827–0379) who handles appeals and dispute resolution.

Center for Veterinary Medicine (CVM)

-Reviewer
-Division Director
-Office Director
-Deputy Center Director
-Center Director

In addition, CVM has procedures in place to handle appeals of written decisions on issues involving science or policy. These procedures, which may apply to certain guidance document appeals, are outlined in a staff manual guide (#1240.3130). For additional assistance regarding the appeals process in CVM, persons can contact the Associate Director for Policy at 301–827–0139.

Center for Devices and Radiological Health (CDRH)

-Reviewer/Consumer Safety Officer
-Branch Chief/Team Leader
-Division Director
-Office Director
-Deputy Center Director
-Center Director

Questions related to the CDRH appeals process may be answered by the Division of Small Manufacturer's Assistance at 800–638–2041 or 301–443–6597. Questions may also be faxed to 301–443–8818.

Center for Food Safety and Applied Nutrition (CFSAN)

-Reviewer/Consumer Safety Officer
-Division Director
-Office Director
-Deputy Center Director
-Center Director

In CFSAN, the Industry Activities staff at 202–205–5251 is the contact point for appeals and will direct inquiries relating to appeals of guidance documents to the appropriate CFSAN office.

Office of Regulatory Affairs (ORA)

-Field Investigator/Field Inspector
-Supervisor/Team Leader
-Branch Chief
-District Director
-Regional Director

The Regional Directors report to the Associate Commissioner for Regulatory Affairs.

In addition, FDA's District Offices and resident posts nationwide have a variety of small business representatives, public affairs specialists, and others who can respond to questions from outside the agency regarding appeals. A listing of FDA's offices is found in the blue pages of local telephone directories and on FDA's home page at ''http://www.fda.gov''. Questions related to an appeal of guidance documents in ORA may be answered by the Division of Compliance Policy, which can be reached at 301–827–0420.

If it is unclear which Center or Office produced a guidance document or a person does not know where to begin an appeal, the Office of the Ombudsman handles jurisdictional questions and is available to refer those outside the agency to the appropriate place.

In summary, appeals regarding guidance documents can be made either by going up the chain of command, using specific Center or Office procedures, or going directly to the Office of the Ombudsman.

BILLING CODE 4160–01–F

Sample Cover Sheet for
Draft Guidance Documents

Guidance for Industry

FDA Approval of New Uses for Product XX

DRAFT GUIDANCE

This guidance document is being distributed for comment purposes only.

Draft released for comment on: _____.

Comments and suggestions regarding this draft document should be submitted by _____, 1997, to _____. For questions regarding this draft document, contact _____.

U.S. Department of Health and Human Services
Food and Drug Administration
Center for XX
Date

Sample Cover Sheet for
Final Guidance Documents

Guidance for Industry

FDA Approval of New Uses for Product XX

U.S. Department of Health and Human Services
Food and Drug Administration
Center for XX
Date

[FR Doc. 97–4852 Filed 2–25–97; 8:45 am]
BILLING CODE 4160–01–C

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. March 13, 1997, 8 a.m., and March 14, 1997, 8:30 a.m., Quality Suites Hotel—Shady Grove, Potomac Rooms I, II, and III, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 13, 1997, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, 5 p.m. to 5:30 p.m.; open committee discussion, March 14, 1997, 8:30 a.m. to 10 a.m.; closed committee discussion, 10 a.m. to 10:30 a.m.; Linda A. Smallwood, Office of Blood Research and Review (HFM–350), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 7, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of March 13, 1997, the committee will discuss nucleic acid testing of plasma pools. In the afternoon, the committee will hear an informational report on the reinvention of the Biologics License Application (BLA) for blood products and have a discussion on the topic of patient notification. On March 14, 1997, the committee will review the final report of the site visit of the Laboratory of Plasma Derivatives, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Closed committee discussion. On March 14, 1997, the committee will discuss confidential and personal privacy information relevant to the scientific site visit report. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. March 24 and 25, 1997, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, March 24, 1997, 8:45 a.m. to 9:15 a.m., unless public participation does not last that long; closed presentation of data, 9:15 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5:30 p.m.; open public hearing, March 25, 1997, 8:45 a.m. to 9:15 a.m., unless public participation does not last that long; closed presentation of data, 9:15 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Karen Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anesthetic and Life Support Drugs Advisory Committee, code 12529. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 14, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drugs (IND's) and new drug applications (NDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour

long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 24, 1997

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–4959 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97D–0041]

The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised compliance guide entitled, ''The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897).'' The revised compliance guide is intended to help small entities comply with the final rule restricting the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. This action is being taken under the Small Business Regulatory Enforcement Fairness Act.

DATES: Comments may be submitted at any time.

ADDRESSES: The revised compliance guide entitled ''The Small Entity Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)'' is available on the Internet at ''http://www.fda.gov/'', or a paper copy may be ordered free of charge by calling 1–800–FDA–4KIDS. Submit written comments on the revised compliance guide to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The revised compliance guide and received comments are available for public examination in the

Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, rm. 14–72, Rockville, MD 20857, 301–827–0867.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 28, 1996 (61 FR 44396), FDA issued a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents. The final rule covers three general classes of nicotine-containing products: Cigarettes, cigarette tobacco, and smokeless tobacco. The final rule applies to manufacturers, distributors, and retailers who make, distribute, or sell such products.

Beginning on February 28, 1997, Federal regulation will prohibit retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to persons under the age of 18, and will require retailers to verify the age of all customers under the age of 27 by checking a photographic identification for date of birth. Under the current schedule, starting August 28, 1997, the remaining provisions of the rule will be effective, except for the sponsorship provision, which will be effective on August 28, 1998.

Under the Small Business Regulatory Enforcement Act (Pub. 104–121), FDA is announcing the availability of the revised compliance guide which is intended to help small businesses comply with the requirements of the new rule. An earlier version of the compliance guide was previously available on the Internet and in paper form. The agency believes that the rulemaking process provided ample opportunity to comment on issues concerning all the underlying regulatory provisions of the rule. However, FDA is soliciting comments on the guide itself and may amend the guide periodically as a result of comments received. The agency is making available at this time a revised compliance guide which covers all of the access restrictions even though it is the photographic identification for date of birth requirement that becomes effective first. Therefore, in submitting comments, persons should consider the implementation dates of the provisions described in the guide.

Dated: February 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4793 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Comprehensive Hemophilia Centers, Genetic Services, and Maternal and Child Health Improvement Projects

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that approximately $10.2 million in fiscal year (FY) 1997 funds will be available for grants and cooperative agreements for the following activities: Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS), including genetic disease testing, counseling and information services; and special MCH improvement projects (MCHIP) which contribute to the health of mothers, children, and children with special health care needs (CSHCN). All awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. Within the HRSA, SPRANS grants are administered by the Maternal and Child Health Bureau (MCHB). Grants for SPRANS research and training are being announced in a separate notice. No new SPRANS hemophilia program grants will be funded in FY 1997.

Of the approximately $52.1 million available for SPRANS genetics and MCHIP activities in FY 1997, about $10.2 million will be available to support approximately 63 new and competing SPRANs renewal projects, at a cost of about $161,900 per project. The actual amounts available for awards and their allocation may vary depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 to 5 years in duration. Funds for grants under the MCH Federal Set-Aside Program are appropriated by Public Law 104–208.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (*Full Report:* Stock No. 017–001–00474–0) or Healthy People 2000 (*Summary Report:* Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202–512–1800).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) WordPerfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file.

For applicants for SPRANS grants and cooperative agreements who are unable to access application materials electronically, a hard copy (Revised PHS form 5161–1, approved under OMB clearance number 0937–0189) may be obtained from the HRSA Grants Application Center. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided. The Center may be contacted by: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@ix.netcom.com. Completed applications should be returned to: Grants Management Officer, HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850. Please indicate the appropriate CFDA # for the application being submitted (see table below).

DATES: Potential applicants are invited to request application packages for the particular program category in which they are interested, and to submit their applications for funding consideration. Deadlines for receipt of applications differ for the several categories of grants. These deadlines are as follows:

MCH FEDERAL SET-ASIDE COMPETITIVE GRANTS AND COOPERATIVE AGREEMENTS FOR GENETIC SERVICES, AND MATERNAL AND CHILD HEALTH IMPROVEMENT PROJECTS ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY FY 1997

CFDA No.	Funding source/category	Application deadline	Est. number of awards	Est. amounts available	Project period
Category 1: Grants					
93.110(A)	Genetic Services	April 28, 1997	21	$ 3.6 million	3 years.
93.110(F)	Integrated Services for CSHCN	May 16, 1997	8–10	900,000	3–4 years.
93.110(I)	State Fetal/Infant Mortality Review Support Centers.	May 13, 1997	5	600,000	3 years.
93.110(U)	Data Utilization and Enhancement for State/Community Infrastructure Building and Managed Care.	June 30, 1997	15–17	1 million	1–3 years.
Category 2: Cooperative Agreements					
93.110(C)	Managed Care Policy and CSHCN	April 11, 1997	1	375,000	4 years.
93.110(G)	Partnership for Information and Communications.	April 15, 1997	5	1.1 million	5 years.
93.110(M)	Health, Mental Health and Safety for Schools	June 3, 1997	1	200,000	4 years.
93.110(N)	Partners in Program Planning for Adolescent Health.	June 17, 1997	1	100,000	up to 5 years.
93.110(P)	Health and Safety in Child Care Settings	June 3, 1997	1	175,000	3 years.
93.110(O)	SIDS/OID Program Support Center	April 18, 1997	1	350,000	5 years.

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Sandra Perry, Grants Management Officer (GMO), Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18–12, Rockville, Maryland 20857, telephone: 301–443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Section 502 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989, requires that 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million are set aside by the Secretary of Health and Human Services (HHS) for special Community Integrated Service Systems (CISS) projects authorized under Section 501(a)(3) of the Act. Of the remainder of the total appropriation, Section 502(a) of the Act requires that 15 percent of the funds be retained by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); for genetic disease testing, counseling, and information development and dissemination programs; for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services. The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the SPRANS set-aside.

Availability of FY 1997 funds for MCH research and training grants is being announced separately from other SPRANS grants this year in order to help potential applicants better distinguish among very large numbers of SPRANS categories and subcategories. No new SPRANS hemophilia program grants will be funded in FY 1997.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements for project categories covered by this announcement. As noted in the FUNDING CATEGORIES section below, based on the subject matter of particular categories or subcategories, applications may be encouraged from or preference for funding given to applicants with a specified area of expertise.

Funding

Two categories of SPRANS awards are open for competition in FY 1997: (1) grants; and (2) cooperative agreements.

Category 1: Grants

Grants in the following 4 subcategories will be awarded in FY 1997:

Subcategory 1.1: Genetic Services (CFDA #93.110A)

- Narrative Description of this Competition: The purpose of these grants is to improve the quality, availability, accessibility, and utilization of genetic services as an integral component of comprehensive maternal and child health care. Grants will be awarded competitively to support projects on priority topics specified below.
- Estimated Amount of this Competition: $3.6 million.
- Number of Expected Awards: 21.
- Funding Priorities and/or Preferences: Priority topics for projects include: (1) Genetics in primary care; (2) genetic services networks; (3) comprehensive care for Cooley's Anemia; (4) genetic services for populations with ethnocultural barriers

to care; (5) comprehensive care for infants with Sickle Cell disease identified through State newborn screening programs; and (6) genetics in managed care.

• Application Deadline: April 28, 1997.

• Contact Person: Jane Lin-Fu, M.D., telephone: 301–443–1080.

Subcategory 1.2: Integrated Services for Children with Special Health Care Needs (CFDA #93.110F)

• Narrative Description of this Competition: The purpose of this competition is to demonstrate innovative and nationally replicable models of community-based services in two areas: (1) Reduction of barriers to service integration for young children with special health care needs and their families. Funded activities will demonstrate successful community approaches for resolving Federal Interagency Coordinating Council (FICC) identified barriers to community services for young children with disabilities and their families. Projects will demonstrate and make recommendations on replicable community-wide strategies in one or more of the following areas: (a) Coordination of program eligibility requirements; (b) coordinated financing of services; (c) shared data and information systems; and (d) coordination of early intervention services with the medical home. All models are expected to involve substantive coordination and participation with medical/health homes and the broad system of community services required by Part H of the Individuals with Disabilities Education Act (IDEA).

(2) Promoting the accessibility of ''medical homes'' (i.e., ongoing source of health/medical care) for CSHCN and their families through family/professional partnerships. Funded activities will support partnership arrangements between families and community health providers/managed care organizations, and demonstrate that these partnerships can be used to establish or expand quality primary and specialty care and supportive services through collaborative working relationships with other health, mental health, education, social services, and ancillary networks.

• Estimated Amount of this Competition: $900,000.

• Number of Expected Awards: 8–10.

• Funding Priorities and/or Preferences: Proposals must be developed, implemented, and demonstrated at the community level and in partnership with community programs. Preference will be given to public and private community-based providers and programs; community/State agency partnerships; and community coalitions. Special consideration will be given to established community coalitions with existing projects and models related to this competition, including the member communities of the ''Communities Can'' coalition, a national coalition of public/private community partnerships serving CSHCN. (A list of member communities is included in the application kit.) For area (2), preference for funding will be given to managed care companies and community-based organizations serving culturally diverse, underserved populations.

• Evaluation Criteria: See CRITERIA FOR REVIEW; applications will be reviewed, in addition, on the basis of the extent to which they: (a) demonstrate substantive involvement of the medical home; (b) show evidence of substantive family/professional partnership in all aspects of the project; (c) show potential for national dissemination and replication; (d) show evidence of partnership with the broad early intervention community; and (e) leverage the resources of other local, state, and federally funded initiatives.

• Application Deadline: May 16, 1997.

• Contact Person: Bonnie Strickland, Ph.D., or Diana Denboba, telephone: 301–443–2370.

Subcategory 1.3: State Fetal/Infant Mortality Review Support Centers (CFDA #93.110I)

• Narrative Description of this Competition: This initiative is designed to support State MCH agencies, or their designees, to stimulate and promote Fetal and Infant Mortality Review Programs in communities in order to enhance needs assessment and quality improvement efforts. Projects will support training and technical assistance activities that would be targeted to the particular needs within the State. State centers would work collaboratively with the national center located at the American College of Obstetricians and Gynecologists.

• Estimated Amount of this competition: $600,000.

• Number of Expected Awards: 5.

• Funding Priorities and/or Preferences: Preference for funding will be given to Title V programs or their designees.

• Evaluation Criteria: See CRITERIA FOR REVIEW; application guidance materials will specify final criteria.

• Application Deadline: May 13, 1997.

• Contact Person: Ellen Hutchins, Sc.D., telephone: 301–443–9534.

Subcategory 1.4: Data Utilization and Enhancement for State/Community Infrastructure Building and Managed Care (CFDA #93.110U)

• Narrative Description of this Competition: The purpose of these grants is to enable State MCH and CSHCN programs to enhance the use of qualitative and quantitative analytic methods in local problem solving for MCH populations. Awards are intended to supplement or complement existing data utilization activities and to foster and strengthen continuing collaboration among State and local public health agencies, private sector efforts and academic institutions. This initiative is specifically designed to assist States, local communities, and supporting entities in the following categories: (1) Developing, adapting and integrating a sentinel model and system to assess the benefits and risks to the health status of children and families resulting from State and private sector health, welfare reform and, specifically, managed care efforts in terms of quantitative and qualitative measures focused upon needs assessments, outcome measures, systems performance, quality, efficacy, effectiveness and efficiency; (2) analyzing the economic implications of maternal and child health programs with the objective of augmenting the capacity of State and local policy staff to use, interpret and conduct economic assessments; and (3) enhancing the use of information technologies in State and local MCH/CSHCN programs and agencies.

• Estimated Amount of this Competition: $1 million.

• Number of Expected Awards: 15–17.

Funding Priorities and/or Preferences: Special consideration will be given to proposals seeking to identify and track emerging issues resulting from health care structural, financial, and demographic changes (e.g., health care and welfare reform, managed care waivers, population income shifts, etc.).

• Evaluation Criteria: See CRITERIA FOR REVIEW; application guidance will specify final criteria.

• Application Deadline: June 30, 1997.

• Contact Person: Russ Scarato, telephone: 301–443–0701.

Category 2: Cooperative Agreements

Cooperative agreements in 6 subcategories will be awarded in FY 1997.

It is anticipated that substantial Federal programmatic involvement will

be required in these cooperative agreements. This means that after award, awarding office staff provide technical assistance and guidance to, or coordinate and participate in, certain programmatic activities of award recipients beyond their normal stewardship responsibilities in the administration of grants. Federal involvement may include, but is not limited to, planning, guidance, coordination and participation in programmatic activities. Periodic meetings, conferences, and/or communications with the award recipient are held to review mutually agreed upon goals and objectives and to assess progress. Details on the scope of Federal programmatic involvement in cooperative agreements included in this Notice, consistent with HRSA grants administration policy, are included in the application guidance kit for each cooperative agreement subcategory.

Subcategory 2.1: Managed Care Policy and CSHCN (CFDA #93.110C)

- Narrative Description of this Competition: This cooperative agreement will support a national policy center to implement strategic planning to assure the availability and accessibility of comprehensive, community-based, culturally competent, and family-centered care to CSHCN and their families in a managed care environment. The center supported by this agreement will advance the state of the art and foster the ability of leaders in the field to interact. It will: (1) Analyze existing national epidemiologic studies of CSHCN (currently defined as children who have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and who also require health and related services of a type or amount beyond that required by children generally); (2) monitor access to necessary medical, health and related services for CSHCN who are privately insured, underinsured or uninsured, in consultation with State and community providers, Medicaid agencies and families; and (3) support analyses of the work of national workgroups addressing critical issues for CSHCN in areas such as quality of care, cost and utilization of services, and provider networks; (4) analyze the impact on CSHCN of legislative and policy changes at the national, state and local levels; and (5) utilize the full range of available data and information to make recommendations for the successful integration of managed care into the community system of services for CSHCN and their families.
- Estimated Amount of this Competition: $375,000.
- Number of expected Awards: 1.
- Funding Priorities and/or Preference: Preference will be given to organizations with proven national experience and an existing infrastructure for policy analysis at the national level on issues related to chronic care in the emerging managed care system.
- Application Deadline: April 11, 1997.
- Contact Person: Irene Forsman, M.S., R.N. 301–443–9023.

Subcategory 2.2: Partnership for Information and Communications (PIC) (CFDA #93.110G)

- Narrative Description of this Competition: The PIC program enhances communication between the MCHB and governmental, professional and private organizations representing leaders and policy makers concerned with issues related to maternal and child health. It facilitates dissemination of new maternal and child health related information to these policy and decision makers and provides those individuals and organizations with a means of communicating issues directly to the Maternal and Child Health program and to each other. Presently, this program consists of organizations representing State Title V programs; State legislators; private business, particularly self-insured businesses; philanthropic organizations; municipal health policy makers; county health policy makers; parent organizations; and other national membership organizations.
- Estimated Amount of this Competition: $1.1 million.
- Number of Expected Awards: 5.
- Funding Priorities and/or Preferences: For FY 1997, preference for funding will be given to national membership organizations representing State Governors and their staffs; State Health Officers; nonprofit and for-profit managed care organizations; and coalitions of organizations promoting the health of mothers and infants.
- Application Deadline: April 15, 1997.
- Contact Person: Stuart Swayze, M.S.W., telephone: 301–443–2917.

Subcategory 2.3: Health, Mental Health and Safety for Schools (CFDA #93.110M)

- Narrative Description of this Competition: This cooperative agreement, a collaborative effort by HRSA and the Centers for Disease Control and Prevention, will support a process that will result in development of advisory guidelines for assuring basic health and safety in Kindergarten-12 grade school settings. The standards will be developed through a consensus process, which relies upon exchanges among groups of experts in specific topical areas to determine the state of the science and art. The guidelines will consolidate the best features of the array of guidelines, recommendations, and standards presently in existence. They will be made available to the field as a model for State health and education agencies and school districts to adopt or adapt. This initiative is based upon the process used to develop the National Health and Safety Performance Standards: Guidelines for Out of Home Child Care, which are currently helping States and communities to determine appropriate child care settings. As with the Child Care guidelines, this initiative is expected to be a collaborative effort among those organizations concerned with health, safety and schools.
- Estimated Amount of this Competition: $200,000.
- Number of Expected Awards: 1.
- Funding Priorities and/or Preferences: Preference for funding will be given to organizations which have credibility in the education community and the capacity to address all aspects of health services, health education, and injury and violence prevention in the school environment.
- Application Deadline: June 3, 1997.
- Contact Person: Stephanie Bryn, M.Ph., telephone: 301–443–3513.

Subcategory 2.4: Partners in Program Planning for Adolescent Health (CFDA #93.110N)

- Narrative Description of this Competition: This cooperative agreement is part of a process to involve organizations having an historic interest in adolescent health in developing the programming of HRSA's Office of Adolescent Health (OAH). The OAH will collaborate with these organizations in seeking policy guidance from and providing programmatic information to their memberships. Organizations currently receiving support under this program are the American Medical Association, the American Psychological Association, the American Bar Association, and the National Association of Social Workers. This competition will allow for expansion of this collaboration.
- Estimated Amount of this Competition: $100,000.
- Number of Expected Awards: 1.
- Funding Priorities and/or Preferences: For FY 1997, preference for funding will be given to national membership organizations representing the professional discipline of nursing.

Other professional disciplines may be the focus of future competitions.

• Application Deadline: June 17, 1997.

• Contact Person: Trina Menden Anglin, M.D., Ph.D., telephone: 301–443–4026.

Subcategory 2.5: Health and Safety in Child Care Settings (CFDA #93.110P)

• Narrative Description of this Competition: This cooperative agreement supports the development and implementation of State-based programs to expand the number of public (public health nurses, nurse practitioners, physicians, nutritionists, dentists, mental health providers, and others) and private sector (managed care supported outreach staff and others) health professionals trained to serve as health care consultants to child care programs. This project will serve as a national model; it is an outgrowth of the MCHB-sponsored National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs and will support promotion of healthy development and increased access to preventive health services and safe physical environments for all children.

• Estimated Amount of this Competition: $175,000.

• Number of Expected Awards: 1.

• Application Deadline: June 3, 1997.

• Contact Person: Jane Coury, telephone: 301–443–4566.

Subcategory 2.6: SIDS and Other Infant Death Program Support Center (CFDA #93.110O)

• Narrative Description of this Competition: This cooperative agreement will fund population-based activities (e.g., systems analysis, epidemiology, health promotion) in support of development of community-based services to reduce as much as possible the risk of Sudden Infant Death Syndrome (SIDS) and other infant deaths, to appropriately support families when an infant death does occur, and will analyze standardized information about infant deaths in the hope of discovering factors which can be ameliorated to reduce the risk of a future infant death. Particular program elements will include risk reduction, peer support programs, services for hard to reach populations, and monitoring and reporting on SIDS and other infant deaths. The awardee will identify commonalities among processes addressing fatal events in the MCH population and determine if and how these activities could be combined to allow a more coherent approach to addressing community mortality and morbidity.

• Estimated Amount of this Competition: $350,000.

• Number of Expected Awards: 1.

• Application Deadline: April 18, 1997.

• Contact Person: Paul Rusinko, telephone: 301–443–2115.

Special Concerns

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Evaluation Protocol

A maternal and child health discretionary grant project, including any SPRANS project, is expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the grant activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities may not be funded.

Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds under the specific project categories in the FUNDING CATEGORIES section above as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance regarding review criteria is supplied in application materials, which will specify final criteria.

—The quality of the project plan or methodology.

—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.

—The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel.

—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

—The adherence of the project's evaluation plan to the requirements of the EVALUATION PROTOCOL.

—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).

—The extent to which the application is responsive to the special concerns

and program priorities specified in this notice.

Funding of Approved Applications

Final funding decisions for SPRANS grants and cooperative agreements are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications, e.g., applications from geographical areas without previously funded projects in a particular category vs. applications from areas with previously funded projects. Within any category of approved projects, special consideration may be given, i.e., the score of an individual project may be favorably adjusted, if the project addresses specific priorities or categorical areas identified as meriting special consideration.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 525).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 20, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–4796 Filed 2–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Surface Mining Reclamation and Enforcement Advisory Board

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Office of Surface mining Reclamation and Enforcement Advisory Board; Notice of renewal.

SUMMARY: This notice is published in accordance with section 14(b)(1) of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (1988). Following consultation with the Administrator of the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the charter of an advisory committee known as the Office of Surface Mining Reclamation and Enforcement Advisory Board.

The purpose of the Advisory Board is to provide a forum to discuss a variety of regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, Indian tribes, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

The Secretary of the Interior will appoint members to the Advisory Board that represent a cross section of those who are interested in and directly affected by regulatory and reclamation activities. OSM will carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–208–2635.

Certification

I hereby certify that the renewal of the charter of the Office of Surface Mining Reclamation and Enforcement Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: February 10, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–4788 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–05–M

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of a Record of Decision on the issuance of a permit for incidental take of threatened and endangered species.

SUMMARY: This notice advises the public that a decision on the application for an incidental take permit by the State of Washington Department of Natural Resources, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), has been made and that the Record of Decision is available upon request.

FOR FURTHER INFORMATION CONTACT: William Vogel or Craig Hansen, U.S. Fish and Wildlife Service, or Steve Landino, National Marine Fisheries Service at the Pacific Northwest Habitat Conservation Plan Program, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192; (360) 753–9440.

SUPPLEMENTARY INFORMATION:

Decision

The U.S. Fish and Wildlife Service's decision is to adopt the Preferred Habitat Conservation Plan Alternative, issue a permit authorizing incidental take of listed species, and agree to the unlisted species provisions in the Implementation Agreement, as described in the final Environmental Impact Statement. In the future, should any of the currently unlisted species that use the habitat types that occur within the West-side Planning Units (including the Olympic Experimental State Forest) subsequently become listed, the Washington Department of Natural Resources may request that those species be added to the incidental take permit. This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the preferred alternative with its assurances that the mitigation program and enforcement measures will be implemented, all practicable means to avoid or minimize harm have been adopted.

Rationale for Decision

The decision to issue the permit and sign the Implementation Agreement was made because the Habitat Conservation Plan proposed by the Washington Department of Natural Resources to comply with the Endangered Species Act, as well as its legal and constitutional mandates as the trustee manager of State timber lands, meets the statutory criteria for issuance of an incidental take permit under section 10 of the Act, as well as the Fish and Wildlife Service's trust responsibility to Native American Tribes. The Proposed Habitat Conservation Plan Alternative specifically addresses listed species throughout the planning area and riparian habitat management which captures the majority of species that might inhabit the planning units west of the Cascade Crest, including anadromous salmonids which are a resource subject to the Fish and Wildlife Service's trust responsibility. Furthermore, the Proposed Habitat Conservation Plan Alternative provides management goals for all forest types throughout the planning area, and associated species, as well as special habitat management for habitats such as large trees, caves, talus slopes, wetlands, oak woodlands, down logs, and standing snags in the planning units west of the Cascade Crest.

The permit was granted only after the Fish and Wildlife Service determined that the permit was applied for in good faith, that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: February 20, 1997.

Donald V. Friberg,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4836 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Request for Public Comments on Proposed Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: ''The National Atlas of the United States of America''.

OMB approval number: New Collection.

Abstract: Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used: (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format. Focus groups will be held at various locations across the United States and could include prototype product testing. Customer information gathered from the questionnaires and focus groups will be used to evaluate ''The National Atlas of the United States of America'' products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

Bureau form number: None.

Frequency: An estimated 2–3 surveys and 5–8 focus groups per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: Approximately 0.25 hour (15 minutes) per survey and 1 hour per focus group session.

Annual responses: Approximately 1,000 survey and 100 focus group responses.

Annual burden hours: 350.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: February 20, 1997.

Jack Fischer,

Associate Division Chief for Operations.

[FR Doc. 97–4903 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–31–M

Federal Geographic Data Committee (FGDC); Application Notice Establishing the Closing Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Framework Demonstration Projects Program for Fiscal Year (FY) 1997

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1997.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Framework Demonstration Projects Program (FDPP) is to facilitate and provide resources for the development and implementation of the NSDI framework concept. Under this FY 1997 program announcement, applications are to be directed towards projects that test a full range of information content; technical, operational, and business contexts; and institutional interactions of the framework concept. These projects should demonstrate the sustained ability, over a geographic area, to supply data to the greater geospatial data community from locally available data sources through the implementation of the framework process.

In addition, these projects should provide practical examples of framework implementation, suggest innovative alternative approaches to accomplish framework goals and indicate topics for future research and development. Applicants are being sought who are establishing long-term organizational structures, and cooperative arrangements with other organizations in sustained efforts to

build, maintain, and disseminate framework data.

Outcomes of these projects will include the establishment of operational framework sites that will provide testbeds on policies and practices for the framework process. The projects also will serve as examples of framework implementation and as starting points for future framework research and development.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or state-recognized Native American tribes or groups. Each project must be collaborative and involve two or more organizations. The FGDC encourages the collaboration of Federal agencies in these projects, however, Federal agencies may not lead a FDPP project nor submit proposals. The USGS intends to award approximately 7 cooperative agreements with funds totaling $460,000 during fiscal year 1997. Funds requested for a specific project shall not exceed $65,000. Participants are expected to cost-share no less than 100% of the amount of funding received from the Federal government. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcement is expected to be available on or about March 7, 1997. Applications must be received on or before May 16, 1997.

ADDRESSES: Copies of Program Announcement No. 1434–HQ–97–PA–00023 may be obtained by writing to Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Requests may also be made by facsimile to (703) 648–7901. Confirmation by telephone at (703) 648–7372 is recommended.

FOR FURTHER INFORMATION CONTACT: Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; voice telephone number (703) 648–7363; facsimile telephone number (703) 648–7901.

SUPPLEMENTARY INFORMATION: Applications of digital geospatial data vary greatly, but users have a recurring need for a few common themes of data. The framework concept outlined in the report ''Development of a National Digital Geospatial Data Framework'' (April, 1995) proposes a means by which the geospatial data community can work together to produce and maintain commonly needed data for national, regional, state, and local analyses. The report and additional information about the framework are available from the FGDC Secretariat. The materials can be retrieved from the Committee's World Wide Web page at http://www.fgdc.gov, or by contacting the committee by mail at the U.S. Geological Survey, 590 National Center, Reston, Virginia 20192; by Internet at gdc@usgs.gov; by facsimile at (703) 648–5755; or by voice telephone at (703) 648–5514.

Within the geospatial data community, multi-agency, and multi-sector partnership are being established in local and regional areas to collaboratively leverage resources and funding, and coordinate data collection, utilization, and access. The framework builds on these activities by providing a basic information content, and the technical, operational, and business contexts by which a distributed, collaborative data collection and maintenance effort for the nation would operate. The framework information content consists of geodetic control, digital orthoimagery, elevation, transportation, hydrography, governmental units, and cadastral data categories.

While the framework concept is well received by the geospatial data community, questions remain as to its practical implementation, and the modifications in approach that will occur as the community evolves. This program is a means by which the FGDC facilities, and provides resources for the development, and implementation of the NSDI Framework concept.

This program will fund the development of institutions and technology needed for framework operations. Proposals should be from geographic areas where multiple parties have data to share for at least a subset of the framework data content. Project activities may include establishment of the following institutional roles: evaluating, developing and implementing technical standards; coordinating data creation, maintenance, and dissemination for a geographic area; ensuring updates of framework data from local data contributions; developing data quality certification policies; and ensuring data integration among themes, and geographic areas. Technical development and applications may include the following: permanent feature-based identification; the support of multiple resolution data; mechanisms for maintaining the user's data investment when updating their data holding from the framework; processes for gathering and evaluating user satisfaction to the framework; and the evaluation of methods for implementing metadata (including data quality information), required for the framework data.

(Catalog of Federal Domestic Assistance (FDAC) Program Number 15.808)

Geological Survey, Research and Data Acquisition.

Dated: February 21, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–6904 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Notice of Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a), notice is hereby given that the Biloxi, Chitimacha Confederation of Muskogees, Inc., 1112 Daisy Street, Houma, Louisiana 70363 (BCCM), has filed a letter of intent to be considered for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. This letter was received by the Bureau of Indian Affairs (BIA) on October 24, 1995, and was signed by members of the group's governing body.

This petitioner was part of the United Houma Nation, Inc. (UHN), which received a proposed finding December 22, 1994 (59 245:66118–66119). In response, this portion of the UHN has requested that it be considered separately from the UHN. The BCCM has received an extension until May 13, 1997, to respond to the proposed finding. After receipt of the BCCM response to the proposed finding, the BIA will issue an amended proposed finding, which will be published in the Federal Register.

Under §§ 83.9(a) and 83.10(i) of the Federal regulations, the petitioner may then respond to the amended proposed finding, and interested and informed third parties may submit factual and/or legal arguments in support of or in opposition to the group's petition and the proposed finding. The comment period will end 180 days from the date of publication of the amended proposed finding pertaining to the Biloxi, Chitimacha Confederation of

Muskogees, Inc. in the Federal Register. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions must be provided to the petitioner and the BIA simultaneously. The petitioner will have a 60-day period in which to respond to such submissions prior to a final determination regarding the petitioner's status.

Under § 83.10(h), a report summarizing the evidence upon which the UHN proposed finding was based is available upon written request to the BIA. The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS–4603–MIB, 1849 C Street, NW., Washington, DC 20240. Phone: (202) 208–3592.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4838 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–02–P

Proposed Finding for Federal Acknowledgment of the Cowlitz Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs (Assistant Secretary) proposes to acknowledge that the Cowlitz Indian Tribe, PO Box 2547, 1417 15th Avenue No. 5, Longview, WA 98632–8594, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe satisfies all of the criteria set forth in 25 CFR 83.7 as modified by 25 CFR 83.8, and, therefore, meets the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit arguments and evidence to support or rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or request for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research. Mailstop 4603—MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8.

The petitioner consists of descendants of the historical Lower Cowlitz Indians and Upper Cowlitz, or Cowlitz Klickitat, Indians of southwestern Washington. Its members are descendants specifically of the Lower Cowlitz Indians who were represented in 1855 at the Chehalis River Treaty negotiations held between several American Indian tribes of southwest Washington and Federal officials, and of the Upper Cowlitz band which was subsequently amalgamated with the Lower Cowlitz band. Although the Lower Cowlitz refused to sign the Chehalis River Treaty, their participation in the negotiations constitutes unambiguous Federal acknowledgment of the tribe's sovereignty. The petitioner thus meets the requirements of § 83.8 as having unambiguous previous Federal acknowledgment and has been considered under the modifications of § 83.7 that are prescribed by § 83.8. The date of the treaty negotiations, March 2, 1855, has been used as the date of latest Federal acknowledgment for purposes of this finding to enable the petitioner to proceed under the provisions of § 83.8. Because the petitioner had already completed documentation of the petition before the present regulations became effective, it was not necessary to determine if there was a later date of unambiguous Federal acknowledgment for purposes of this evaluation under the 1994 regulations.

The Federal acknowledgment regulations confirm that it is historically valid for tribes to have combined and functioned together as a unit. Under the regulations in 25 CFR part 83, tribes which combined because of historical circumstances may be acknowledged in so far as the group resulting from the amalgamation continued to function as a single tribal unit. The petitioner is an example of a group which has evolved from linguistically distinct and politically independent bands which combined. In reaching this determination, the Assistant Secretary—Indian Affairs took fully into account the historical circumstances surrounding the petitioner's development and the impact of Federal policy in combining the Salish-speaking Lower Cowlitz, the métis descendants of the Lower Cowlitz, and the Sahaptin-speaking Upper Cowlitz into a single entity for administrative purposes between the 1860's and the 1920's.

Since 1855, the Cowlitz Indians have continued to reside in a traditionally dispersed residential pattern along the Cowlitz River valley. The residential locations of the individual subgroups today remain similar to those described by observers in the mid-19th century and by BIA Special Agent Charles Roblin's 1919 Schedule of Unenrolled Indians in western Washington. The tribal entity as defined by Federal policy was identified in BIA documents from the 1860's through the 1880's, from 1904 through the 1930's, and since 1950. The umbrella tribal organization was also regularly identified as an American Indian entity by newspaper accounts from the period 1912–1939, and 1950 to the present. The component settlements comprising the umbrella tribal organization were described by local residents and local historians from the 1890's through the 1960's. Additionally, throughout this period, county vital records and articles in local newspapers regularly described individuals, families, and component settlements as ''of the Cowlitz Tribe.'' Therefore, we conclude that the petitioner meets criterion 83.7(a) as modified by criterion 83.8(d).

As a result of the historical circumstances surrounding the petitioner's development, the modern Cowlitz Indian Tribe (CIT) is a two-level tribal community in which there is comparatively intense community within defined subgroups and a looser community encompassing the overall membership. It is significant that the modern situation does not represent a post-World War II dispersal of a once tightly-knit and more closely related group, but the continuation of a long-standing historical pattern. The subgroups have interacted in consistent ways and similar patterns at least since the formation of the formal Cowlitz Tribal Organization in 1912.

Genealogical relationships within the subgroups remain comparatively close: Within each subgroup, today's adults ordinarily share a set of grandparents. Within the Cowlitz as a whole, the majority of the adult membership shares at least one set of great-grandparents. Throughout the late 19th and early 20th centuries large proportions of people known as Cowlitz married non-Indians, and assimilated into the dominant

society. However, more than half of those who remained continued until the 1920's a pattern of matrimonial endogamy among Upper Cowlitz, Lower Cowlitz, and Cowlitz métis, and patterned out-marriages with other Indian groups. It is this group who remained who constitute the ancestry of today's petitioner.

The active involvement of individuals in the CIT tribal entity has traditionally been, and still is, connected to, and in some cases subordinate to, involvement in subgroup activities. There is also evidence that some individuals, with either the active or tacit support of other family members, became involved in the CIT's Tribal Council activities to ensure that the Tribal Council addressed the interests of their own subgroup.

Viewed in the light of the requirement in 83.1 that the criterion for community be ''understood in the context of the history, geography, culture, and social organization of the group,'' we find that the historical development of the Cowlitz Indian Tribe (CIT) has resulted in a two-level community structure, in which community is stronger at the level of the subgroup and looser, but still extant, at the level of the tribe as a whole. The BIA found social interaction indicative of community through a combination of evidence of weak but consistent interaction among subgroups, and strong interaction within all of the subgroups of the Cowlitz Indian Tribe. There is thus sufficient evidence of community among all subgroups within the Cowlitz Indian Tribe. Thus, we conclude that the petitioner meets criterion 83.7(b) as modified by § 83.8(d), which requires a showing that the group constitutes a distinct, cohesive community at present.

As a consequence of the nature of the historical development of the Cowlitz entity, the interaction among the Cowlitz subgroups at the tribal level is primarily political in nature: the subgroups do not have separate formal leadership, while there is communication and interaction between members of the different subgroups. People within one subgroup know who within another subgroup is an effective political contact or communications liaison. The subgroups form a single political system, with no signs of considering breaking away, despite the presence of conflicts.

The evidence presented indicated that the Cowlitz Indians have had an unbroken sequence of named leadership since the Chehalis River Treaty Council in 1855. Leaders came from both the Lower Cowlitz band and Upper Cowlitz bands until 1912, and after that from the combined Cowlitz Tribal Organization (now CIT). From 1904 through 1934, evidence of continuous political leadership includes the smooth shifting of leadership from the federally-recognized chieftainship and political influence of Atwin Stockum and Captain Peter, to a council of elected offi cers. This organization held meetings attended by a significant portion of the voting members of the tribe almost annually from 1912 through 1939, and from 1950 through the present.

The Cowlitz Tribal Organization was not exclusively a claims organization, although it pursued claims. It did not develop in response external events such as the movement to enroll outsiders at Quinault or Thomas Bishop's Northwestern Indian Federation. Neither did it result from the making of the Roblin Roll by the BIA. Rather, the Cowlitz tribe existed prior to these events and the formal Cowlitz tribal organization operated independently of these external events. In fact, Roblin's 1919 Report showed that the Cowlitz were one of only two unenrolled Washington Indian groups whom he identified as a tribe. Additionally, for the period from 1912 through 1950, the existence of an externally named leadership, along with evidence for the continuation of structured political activity and influence under § 83.8(d)(3) for the overall membership within the loosely-integrated community, was supplemented by considerable evidence of informal leadership exercised within the component subgroups by non-elected elders.

The evidence also indicated that throughout the period since 1855, the named leaders were identified by knowledgeable external authorities, primarily Federal officials, as exercising a sufficient amount of political influence or authority within the overall membership to meet criterion 83.7(c), which is intended to establish continuous tribal political existence. Evidence from BIA documentation was ample for this purpose for the period through the late 1930's, and there was also sufficient evidence for the more recent period. In 1953, the BIA notified the Cowlitz Tribe of Indians (CTI), through its elected leader, of the pending western Washington termination legislation. In 1964, the council and some of the general membership became involved in a dispute concerning the approval of an attorney contract for pursuing claims litigation under the 1946 Indian Claims Commission (ICC) Act. While there is no evidence that the dispu tants aligned themselves along factional lines, the disputes were perceived by Federal officials as a threat to the leadership's stability, indicating that the membership exerted influence on the formally elected leadership.

In 1967, an informally functioning executive committee which had developed under the 1950 constitution of the CTI was expanded by resolution of the general membership at the annual meeting into a formal tribal council. The Tribal Council was then incorporated into the 1974 constitutional revision, which also was adopted by vote of the general membership. However, the annual membership, or General Council, meetings have remained the primary political center. There are political strains over its role *vis-a-vis* that of the Tribal Council and rivalries between the elected leadership of the General Council and that of the Tribal Council. In addition, there was considerable evidence of informal leadership during the period 1950–1973 by community elders.

The 1973/1974 decisions concerning enrollment qualifications have continued to have political impact until the present day.

Some family groups with Yakima-enrolled close relatives maintain that they remain active in the Tribal Council to protect their membership status. The 1/16 Cowlitz blood-quantum provision continued to provoke membership-eligibility disputes within the general membership and within the Tribal Council as recently as the early 1990's.

The Tribal and General Councils have responded to demands from the general membership to broaden the focus of Cowlitz Indian Tribe activities beyond claims and Federal acknowledgment, and to intervene in other matters of concern to the general membership, or of concern to particular extended families or socially-defined categories within the general membership. This process provided evidence for continuous functioning by leaders, leaders' influence on the membership, members' influence on the policies of the governing body, and acknowledgment of leaders by followers under § 83.8(d)(3). Therefore, we conclude that the petitioner meets criterion 83.7(c) as modified by criterion 83.8(d).

The petitioning group has provided a copy of its governing document, which describes its membership criteria. Thus, we conclude that the petitioner meets criterion 83.7(d).

The petitioner's members descend from the Lower Cowlitz band as it existed at the time of the Chehalis River treaty negotiations in 1855, from métis descendants of Lower Cowlitz women who had married French-Canadian

employees of the Hudson's Bay Company prior to 1855, from the Upper Cowlitz and Lower Cowlitz bands as enumerated by the Federal Government's Office of Indian Affairs (OIA) in 1878, and from persons enumerated as Cowlitz Indians on the BIA's 1919 Schedule of Unenrolled Indians in Western Washington prepared by special agent Charles Roblin.

The present membership also descends from individuals identified as Cowlitz Indians in pre-1855 Roman Catholic Church records, persons identified as Cowlitz Indians in public vital records, and from individuals identified as Cowlitz Indians on BIA allotment records (for Indian homesteads, public domain allotments, and Yakima Reservation allotments) and in affidavits filed with the BIA between 1911 and 1918 in connection with applications for adoption and allotment on the Quinault Reservation.

Previous acknowledgment decisions have allowed for the movement of families between bands and tribes, as well as the formal or informal merger of bands and tribes. The amalgamation of the Lower Cowlitz and Upper Cowlitz, and the association of non-Cowlitz métis families with the Cowlitz Indians in the society which developed at the Hudson's Bay Company settlement on Cowlitz Prairie prior to the 1855 date of prior unambiguous Federal acknowledgment, fall within these parameters. The process by which a limited number of non-Cowlitz métis families became associated with the Cowlitz Indians was carefully analyzed by the BIA. It was concluded that descent from such associated métis families constituted descent from the historical tribe within the meaning of criterion 83.7(e) Thus we conclude that the petitioner meets criterion 83.7(e).

The constitution of the Cowlitz Indian Tribe prohibits dual enrollment. This provision is enforced. The BIA found no evidence that a substantial proportion of the petitioner's membership was enrolled in any other Federally acknowledged tribe. Therefore, we find that the petitioner meets criterion 83.7(f).

No evidence was found that the petitioner or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship. Therefore, we find that the petitioner meets criterion 83.7(g).

Based on this preliminary factual determination, we conclude that the Cowlitz Indian Tribe should be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention; Branch of Acknowledgment and Research, Mailstop 4603—MIB. Third parties must simultaneously supply copies of their comments to the petitioner in order for them to be considered by the Department of the Interior.

During the response period, the Assistant Secretary shall provide technical advice concerning the proposed finding and shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law (83.10(j)(1)). In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

If third party comments are received during the regular response period, the petitioner shall have a minimum of 60 days to respond to these comments. This period may be extended at the Assistant Secretary's discretion if warranted by the nature and extent of the comments (83.10(k)).

At the end of the response periods the Assistant Secretary shall consider the written arguments and evidence submitted during the response periods and issue a final determination. The Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable time frame for preparation of the final determination and notify the petitioner and interested parties of the date such consideration begins. The Assistant Secretary may conduct any necessary additional research and may request additional information from the petitioner and third parties. A summary of the final determination will be published in the Federal Register within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins, as provided in 25 CFR 83.10(l)(2).

Dated: February 12, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4837 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–02–P

Sac and Fox Nation of Missouri Liquor and Beer Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983). I certify that the Sac and Fox Nation of Missouri Liquor and Beer Act was duly adopted by Resolution R–53–96 of the Sac and Fox Nation of Missouri Tribal Council on September 27, 1996. The ordinance provides for the regulation, sale, possession and use of alcoholic liquor and beer within the Tribe's jurisdiction.

DATES: This ordinance is effective as of February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4603 MIB, Washington, D.C. 20240–4001; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Sac and Fox Nation of Missouri Liquor and Beer Ordinance shall read as follows:

Sac and Fox Liquor and Beer Act

Section 1. Title and Purpose

This Title shall be known as the Sac and Fox Liquor and Beer Act (''Act''). This law is enacted to regulate the sale and distribution of liquor and beer products on all properties under the jurisdiction of the Sac and Fox Nation of Missouri, and to generate revenue to fund needed tribal programs and services.

Section 2. Authority

This Act is enacted pursuant to Article V (f) and (i) of the Constitution of the Sac and Fox Nation of Missouri in Kansas and Nebraska and the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161).

Section 3. Definitions

Unless otherwise required by the context, the following words and

phrases shall have the designated meanings:

(a) ''Nation'' or ''Tribe'' shall mean the Sac and Fox Nation of Missouri in Kansas and Nebraska.

(b) ''Tribal Council'' shall mean the Tribal Council of the Sac and Fox Nation of Missouri as constituted by Article IV of the Constitution of the Sac and Fox Nation of Missouri in Kansas and Nebraska.

(c) ''Commission'' shall mean the Sac and Fox Liquor and Beer Control Commission established pursuant to Section 201 of this Act.

(d) ''Sac and Fox Indian Country'' shall mean Indian Country as defined by 18 U.S.C. § 1151 subject to the jurisdiction of the Sac and Fox Nation of Missouri, including but not limited to, any lands and waters held in trust by the Federal Government within the jurisdiction of the Sac and Fox Nation of Missouri.

(e) ''Sale'' shall mean the transfer, exchange or barter, in any or by any means whatsoever, for a consideration, by any person, association, partnership, or corporation, of liquor or beer products.

(f) ''Wholesale Price'' shall mean the established price for which liquor and beer products are sold to the Sac and Fox Nation of Missouri or any Operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(g) ''Alcohol'' is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(h) ''Liquor'' shall mean the four varieties of liquor, commonly referred to as alcohol, spirits, wine, and beer in excess of 5% percent of alcohol, and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine, or beer in excess of 5% percent of alcohol, and intended for oral consumption.

(i) ''Beer'' shall mean any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 5% percent of alcohol by weight.

(j) ''Liquor Outlet'' shall mean a tribally licensed retail sale business selling liquor within the Sac and Fox Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the ''Liquor Outlet'' shall be deemed to include the entire entertainment or recreation facility and associated areas.

(k) ''Beer Outlet'' shall mean a tribally licensed retail sale business selling beer within the Sac and Fox Indian Country, including all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the ''Beer Outlet'' shall be deemed to include the entire entertainment or recreation facility and associated areas.

(l) ''Operator'' or ''Licensee'' shall mean any person twenty-one (21) years of age or older, properly licensed by the Nation to operate a liquor and/or beer outlet.

Chapter One—Prohibition

Section 101. General Prohibition

It shall be unlawful to buy, sell, give away, consume, furnish, or possess any liquor or beer or product containing alcohol for ingestion by human beings, or to appear or be found in a place where liquor or beer are sold and/or consumed except as allowed by the Sac and Fox Liquor and Beer Act and regulations promulgated thereunder.

Section 102. Possession for Personal Use

Possession of liquor or beer for personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or tribal law or regulation, be lawful within the Sac and Fox Indian Country, so long as such liquor or beer was lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Sac and Fox Indian Country and consumed within a private residence or location, or at a location or facility specifically licensed for the public consumption of liquor or beer.

Chapter Two—Licensing

Section 201. Licensing of Liquor and Beer Outlets

The Tribal Council shall be the Liquor and Beer Control Commission. The Commission is empowered to:

(a) Administer this Act by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Act.

(b) Adopt and enforce rules and regulations in furtherance of the purpose of this Act and in the performance of its administrative functions.

Section 202. Application for Liquor and Beer Outlet Licenses

(a) Application. Any person twenty-one (21) years of age and older, may apply to the Commission for a liquor and/or beer outlet license.

(b) Licensing Requirements. The person applying for such permit must make a showing once a year, and must satisfy the Commission that:

(1) he/she is a person of good moral character;

(2) he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the Nation, state, or any other tribe or state of the United States, within three (3) years immediately preceding the date of his/her petition;

(3) he/she has not violated the laws commonly called ''prohibition laws'';

(4) he/she has not had any permit or license to sell non-intoxicating liquors revoked by any governmental authority within the previous twelve (12) months.

(c) Processing of Application. The Commission's Secretary shall receive and process applications and be the official representative of the Nation and Commission in matters relating to receipt of applications, liquor and beer excise tax collections and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a responsible person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

(d) Application Fee. Each application shall be accompanied by an application fee to be set by regulation of the Commission.

(e) Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interests of the Sac and Fox Nation, and the license grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the Sac and Fox Nation at the licensed outlet(s).

Section 203. Liquor and Beer Outlet Licenses

(a) Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer outlet license, valid for one year from the date of issuance, which shall entitle the Operator to establish and maintain only the type of outlet being permitted. This license shall not be transferrable. The Licensee must properly and publicly

display the license in the place of business. It shall be renewable at the discretion of the Commission by the submission of the Licensee of a subsequent application form and payment of application fee as provided in Section 202(d).

Section 204. Other Business by Operator

An Operator may conduct another business simultaneously with managing a liquor and/or beer outlet; PROVIDED, if such other business is in any manner affiliated or related to the liquor and/or beer outlet it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premise as a liquor and/or beer outlet, but the Operator shall be required to maintain separate books of account for the other business.

Section 205. Revocation of Operator's License

(a) Failure of an Operator to abide by the requirements of this Act and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided in Section 601 of this Act.

(b) Upon determining that any person licensed by the Sac and Fox Nation to sell liquor or beer is, for any reason, no longer qualified to hold such license or reasonably appears to have violated any terms of the license or tribal regulations, including failure to pay taxes when due and owing, or have been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a tribal or state license or of any provision of this Act, the Chairperson of the Commission shall immediately serve written notice upon the Licensee directing that he/she show cause within ten days why his or her license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

(c) If the Licensee fails to respond to the notice within ten (10) days of service, the Chairperson may issue an order revoking the license or placing such restrictions on the license as the Chairperson deems appropriate, effective immediately. The Licensee may, within the 10 day period, file with the Office of the Chairperson a written response and request for hearing before the Commission.

(d) At the hearing, the Licensee may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Nation may present other evidence as it deems appropriate.

(e) The Commission after considering all of the evidence and arguments, shall issue a written decision either upholding the license, revoking the license or imposing some lessor penalty (such as a temporary suspension or a fine), and such decision shall be final and conclusive.

(f) The Commission's final decision, upon posting a bond with the Court sufficient to cover the Commission's final hearing assessment or ruling, may be appealed by Licensee to the Sac and Fox Court. Any findings of fact of the Commission are conclusive upon the Court unless clearly contrary to law. The purposes of Court review are not to substitute the Court's finding of facts or opinion for the Commission's, but to guarantee due process of law. If the Court should rule for the appealing party, the Court may order a new hearing giving such guidance for the conduct of such as it deems necessary for a fair hearing. No damage or monies may be awarded against the Commission, its members, nor the Nation and its agents and employees in such an action.

Chapter Three—Liquor and Beer Sales and Transportation

Section 301. Sales by Liquor and Beer Wholesalers and Transport of Liquors and Beers Upon Sac and Fox Indian Country

(a) Right of Commission to Scrutinize Suppliers. The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of the suppliers and/or wholesalers who supply or are expected to supply liquor and/or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchases of said stock from a supplier or wholesaler for the following reasons: non-payment of Tribal taxes; bad business practices; or sale of unhealthy supplies. A ten day notice of stopping purchases (''Stop Purchase Order'') will be given by the Commission whenever purchases from a supplier are to be discontinued unless there is a health emergency, in which case the Stop Purchase order may take effect immediately.

(b) Freedom of Information from Suppliers. Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators. All records shall be kept according to Section 302(g) of this Act.

Section 302. Sales by Retail Operators

(a) Commission Regulations. The Commission shall adopt regulations which shall supplement these laws and facilitate their enforcement. These regulations shall include prohibitions on sales to minors, where liquor and/or beer may be consumed, persons not allowed to purchase liquor and/or beer, hours and days when outlets may be open for business, and other appropriate matters and controls.

(b) Sales to Minors. No person shall give, sell, or otherwise supply liquor and/or beer to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

(c) Consumption of Liquor and/or Beer upon Licensed Premises. No Operator shall permit any person to open or consume liquor or beer on his or her premises or any premises adjacent thereto and in his or her control until the Commission allows the consumption of liquor and/or beer and identifies where liquor and/or beer may be consumed on Sac and Fox Indian Country.

(d) Conduct on Licensed Premises.

(1) No Operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the Nation and/or of the State of Kansas.

(e) Employment of Minors. No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis.

(f) Operator's Premises Open to Commission Inspection. The premises of all Operators, including vehicles used in connection with liquor and/or beer sales, shall be open during business hours and at all other reasonable times

to inspection by the Commission or its designated representatives.

(g) Operator's Records. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor and/or beer by Operators shall be kept on file in the retail premises of the Operator purchasing the sale for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor and/or beer, and all memoranda, if any, showing payment of money for liquor and/or beer other than by check, shall be likewise preserved for availability for inspection and checking.

(h) Records Confidential. All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representatives.

(i) Conformity with State Law. Operators shall comply with the State of Kansas liquor and beer laws to the extent required by 18 U.S.C. § 1161. However, the Nation shall have the fullest jurisdiction allowed under Federal law over the sale of liquor and beer products, and related products or activities, within the boundaries of Sac and Fox Indian Country.

Section 303. Transportation through the Reservation not Affected

Nothing herein shall pertain to the otherwise lawful transportation of liquor or beer through the Sac and Fox Indian Country by persons remaining upon public highways and where such beverages are not delivered or sold or offered for sale to anyone within the Sac and Fox Indian Country.

Chapter Four—Taxation and Audits

Section 401. Excise Tax Imposed upon Distribution of Liquor

(a) General Taxing Authority. The Commission shall have authority, as provided by Tribal law, to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Commission upon all liquor and beer products sold within the jurisdiction of the Nation. The Tribal Council may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of retail sale and delivery thereof.

(b) Added to Retail Price. An excise tax, to be set by the Tribal Council, on the wholesale price shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer or purchaser. All taxes paid pursuant to this Act shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purposes of convenience and facility only.

(c) Within 72 hours after receipt of any liquor or beer by any wholesaler or retailer subject to this Act, a tribal tax stamp shall be securely affixed thereto denoting the tribal tax thereon. Retailers or sellers of liquor and/or beer within the Nation's jurisdiction may buy and sell or have in their possession only liquor and/or beer which have the tribal tax stamp affixed to each package.

Section 402. Audits and Inspection

(a) All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative during business hours and at all other reasonable times.

(b) Bond for Excise Tax. The excise tax together with reports on forms to be supplied by the Commission, shall be remitted to the Commission on a monthly basis unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Chapter Five—Liability, Insurance and Sovereign Immunity

Section 501. Liability for Bills

The Nation and the Commission shall have no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesale supplier or any other person.

Section 502. Tribal Liability and Credit

(a) Unless explicitly authorized by tribal statute, Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Nation or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the Nation and the Commission harmless from all claims and liability of whatever nature. The Commission shall revoke an Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

(b) Insurance. The Operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

Section 503. Sovereign Immunity Preserved

Nothing in this statute shall be construed as a waiver or limitation of the sovereign immunity of the Sac and Fox Indian Nation or its agencies, nor their officers or employees.

Chapter Six—Violations-Penalties

Section 601. Violations-Penalties

(a) Any person who violates this Act or elicits, encourages, directs or causes to be violated these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Sac and Fox Nation Court system will have jurisdiction over the proceeding.

1. Any person convicted of committing any violation of this Act shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars ($5,000.00).

2. Additionally, any person upon committing any violation of any provision of this Act may be subject to a civil action for trespass, and upon having been determined by the Court to have committed the violation, shall be found to have trespassed upon the lands of the Sac and Fox Nation, and shall be assessed such damages as the Court deems appropriate in the circumstances.

3. Any person suspected of having violated any provision of this Act shall, in addition to any other penalty imposed hereunder, be required to surrender any liquor or beer in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned upon a finding by the Court after trial that the individual committed no violation of this Act.

4. Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Commission shall be empowered to seize forfeited products.

5. Any stock, goods or other items subject to this Act that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate

confiscation by the Commission or its employees or agents, PROVIDED, that within 15 days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation, and upon proof, the Court shall order the property forfeited and vested in the Sac and Fox Nation of Missouri.

Chapter Seven—Miscellaneous Provisions

Section 701. Severability

If any provision of this Act in its application to any person or circumstance is held invalid, the remainder of the Act and its application to other persons or circumstances is not affected.

Section 702. Effective Date

This Act shall become effective upon publication of the Secretary of the Interior's certification notice in the Federal Register.

Dated: February 20, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4944 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Land Management

[AK–962–1410–00–P; AA–9299]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 36.8 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 2 N., R. 104 W.,
Sec. 36.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 31, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–4835 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–$$–P

[WY–921–41–5700; WYW104027]

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 WYW104027 for lands in Big Horn 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 $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in 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 WYW104027 effective November 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 18, 1997.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–4902 Filed 2–26–97; 8:45 am]

BILLING CODE 4310–22–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

March 11, 1997 Board of Directors Meeting

TIME AND DATE: Tuesday, March 11, 1997, 1:00 PM (OPEN Portion); 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM; Closed portion will commence at 1:30 PM (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of December 10, 1996 Minutes (Open Portion)
3. Meeting schedule through December, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Finance Project in Russia
2. Insurance Project in Bangladesh
3. Pending Major Projects
   Finance Project in Venezuela
4. Approval of December 10, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 25, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–5043 Filed 2–25–97; 2:30 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended

Notice is hereby given that a proposed Stipulation in the bankruptcy proceeding entitled *In re Crafts Precision Industries, Inc.*, Chapter 11 Cash No. 95–14257 (JNF) (Bankr. D. Mass), was lodged on January 31, 1997, with the United States Bankruptcy Court for the District of Massachusetts. The proposed Stipulation resolves a Proof of Claim filed by the United States in the bankruptcy proceeding, on behalf of the Environmental Protection Agency. The Proof of Claim was passed on an obligation of Crafts Precision Industries, Inc. (''Crafts'') pursuant to a consent decree, entered by the United States District Court for the District of New Hampshire on December 8, 1994, in *United States* v. *OK Tool Co., Inc.*, No. 94–517(b) (D.N.H.). The consent decree related to Craft's liability, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, in connection with the Savage Municipal Well Superfund Site in Milford, New Hampshire. The Stipulation provides

that EPA's claim will be an allowed general unsecured claim in the amount of $1,306,500. The dividend on this unsecured claim will be paid according to the plan of reorganization that has been approved in the bankruptcy proceeding.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, Washington, D.C. 20530–0001, and should refer to *In re Crafts Precision Industries, Inc.*, Chapter 11 Case No. 95–14257 (JNF) (Bankr. D. Mass.) (DOJ Ref # 90–11–3–970B).

The proposed Stipulation may be examined at EPA Region 1, One Congress Street, Boston Massachusetts (contact Rona Gregory, 617–565–3051); and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 614–0892. A copy of the proposed Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4833 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in the action entitled *United States of America* v. *ElectroSound Group, Inc., First Holbrook Company, Genco Auto Electric, Inc., Red Ground Company, and Red Ground Corporation,* No. CV–97–728 (E.D.N.Y.), was lodged on February 12, 1997 with the United States District Court for the Eastern District of New York. The proposed Consent Decree resolves the claims by the United States under the Comprehensive Environmental Response, Compensative, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601–9675, on behalf of the U.S. Environmental Protection Agency against the above-named defendants for operable unit 1 at the Site. These claims are for recovery of response costs incurred and to be incurred by the United States in connection with operable unit 1 of the Goldisc Recordings Superfund Site (''Site'') in the Town of Islip, Suffolk County, New York and for injunctive relief to require performance of the remedy selected by the United States Environmental Protection Agency (the ''EPA'') for operable unit 1 at the Site.

The Consent Decree provides for the performance of the remedy (except for institutional controls) by ElectroSound; the provision of access to the Site by Red Ground Company, Red Ground Corporation, and ElectroSound; the implementation of institutional controls by Red Ground Company and Red Ground Corporation; the payment by Genco of $108,000 of EPA's past costs; and the payment by ElectroSound and the First Holbrook Company of $300,000 of EPA's past response costs and $22,000 of EPA's future response cost with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *ElectroSound Group, Inc., First Holbrook Company, Genco Auto Electric, Inc., Red Ground Company, and Red Ground Corporation,* No. CV–97–728 (E.D.N.Y.), DOJ Ref. No. 90–11–2–898B.

The proposed Consent Decree and appendices may be examined at the Office of the United States Attorney, 1 Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201; the Region II Office of the Environmental Protection Agency 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. A copy of the proposed Consent decree and appendices may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $21.00 (25 cents per page reproduction costs) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4877 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *International Fastener Research Corporation, et al.,* Civil Action No. 97–0164, was lodged with the United States District Court for the Western District of Pennsylvania on January 27, 1997. A complaint was filed simultaneously with the lodging of the consent decree.

The proposed consent decree pertains to the Bollinger Steel Superfund Site (''Site''), located in the Borough of Ambridge, Beaver County, Pennsylvania. It resolves the claims of the plaintiff, the United States of America, filed against defendants, International Fastener Research Corporation; WKM Liquidating Partnership; the David Weisz Marital Trust Established Under the Will of Emanuel David Weisz, Deceased; the David Weisz Residuary Trust Established Under the Will of Emanuel David Weisz, Deceased; the Richard Miller Marital Deduction Trust of 1989; the Richard Miller Testamentary Trust; the Kleeman Family Trust; E. Stanley Kleeman; Sylvia Kleeman; Leslie Ima; Leonard Miller; Jay H. Grodin; Sylvia Weisz; the Estate of David Weisz, aka Emanuel David Weisz, Deceased; Stanley Kleeman Inc.; The David and Sylvia Weisz Family Foundation; WKM Investments; Matson Manufacturing Company; WKM Realty; and the L.A. Mart pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*

The consent decree requires the defendants to make a total payment of $475,000 in response costs in two installments and to relinquish any claims they may have against the United States. The consent decree also includes covenants not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9601 *et seq.,* and Section 7003 of the Resource Conservation and Recovery Act (''RCA''), 42 U.S.C. 6973, and provides

the defendants with contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *International Fastener Research Corporation, et al.,* Civil Action No. 97–0164, DOJ Ref. #90–11–2–738D. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Court House, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the body of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $11.75 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4878 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, and 42 U.S.C. 9622, notice is hereby given that on February 18, 1997, a proposed Consent Decree in *United States* v. *Landfill & Resource Recovery, Inc.,* Civil No. 97–078ML, was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree concerns the response to the release and threatened release of hazardous substances at the Landfill & Resource Recovery, Inc. Site located in North Smithfield, Rhode Island, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended. The settlers are owners or operators of the Site as well as generators and transporters of hazardous substances disposed of at the Site.

Under the terms of the Consent Decree, Avnet, Inc., Boston Edison Company, CCL Custom Manufacturing, Inc., General Dynamics Corporation, Olin Corporation, Polaroid Corporation, Stanley Bostich, Inc., The Dexter Corporation, United Dominion Industries, Inc., Waste Management, Inc., Landfill & Resource Recovery, Inc., Truk-Away of RI, Inc., Charles Wilson and David Wilson will complete the remedial action for the Site. In addition, these settlers agree to pay the United States $675,000 and the State of Rhode Island $200,000 for past costs incurred at the Site, to pay oversight costs to be incurred by the United States, to pay $200,000 to the Department of Interior (''DOI'') for damages to natural resources under the joint trusteeship of DOI and the State, to pay $400,000 in satisfaction of the United States' claims under 42 U.S.C. 9606(b)(1), for violations of a unilateral administrative order, and to implement a supplemental environmental project in the amount of $525,000 to purchase wetlands or related property or conservation easements within the Blackstone River Valley National Heritage Corridor. The two other settlers, J. Scott Cannon and J. Robert Cannon, have paid $60,000 to the United States to satisfy the governments' claims for past and future response costs. The Cannons' payment is based on the financial condition of the parties.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Landfill & Resource Recovery, Inc.,* D.J. Ref. 90–11–2–449B.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts and at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 200052 (20) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $35.75 (25 cents per page reproduction cost, excluding all appendices) or $48.75 (25 cents per page reproduction cost, excluding appendices A, J and K) made payable to Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section.

[FR Doc. 97–4834 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 C.F.R. 50.7, 38 FR 19029, and 42 U.S.C. 9622(d) notice is hereby given that a proposed consent decree in *United States* v. *Niagara Mohawk Power Corp.,* Civil Action No. 97–CV–136, was lodged on January 31, 1997 with the United States District Court for the Northern District of New York. The Consent Decree addresses the hazardous waste contamination at the Niagara Mohawk Power Corporation Superfund Site (the ''Site'') in the City of Saratoga Springs, Saratoga County, New York. The Consent Decree requires Niagara Mohawk Power Corporation (''NMPC'') to implement the remedial action selected by the Environmental Protection Agency in the Record of Decision dated September, 1995. Additionally, NMPC is required to reimburse the United States $874,080.04, in U.S. EPA past costs at the Site and pay EPA's oversight costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Niagara Mohawk Power Corp.*, DOJ Ref. #90–11–3–1570.

The proposed consent decree may be examined at the office of the United States Attorney, 231 James T. Foley Courthouse, 445 Broadway, Albany, New York 12207; Region II; Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street,

N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $26.25 for the Consent Decree and $41.50 for the attachments to the Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4874 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States and the State of Oregon* v. *Teledyne Wah Chang Albany,* No. 97–169–RE, (D. Ore.), was lodged on January 31, 1997, with the United States District Court for the District of Oregon. with regard to the Defendant, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency (''EPA'') pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

The United States entered into the Consent Decree in connection with the Teledyne Wah Chang Site (''the Site''), located in Millersburg, Oregon. The Consent Decree provides that the Defendant will reimburse the United States $154,000 for response costs incurred and to be incurred at the Site. Further, the Defendant will be required to implement remedial actions set forth in two Records of Decision for the Site, at an estimated cost of $7.5 million, and to reimburse EPA for its costs of overseeing the remedial work. The Site is an operating producer of zirconium and hafnium metals.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and the State of Oregon* v. *Teledyne Wah Chang Albany,* DOJ Ref. #90–11–2–558.

The proposed Consent Decree may be examined at the office of the United States Attorney, 888 Southwest 5th Avenue, Suite 1000, Portland, Oregon, 97204–2024; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $18.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–4873 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Medical Practice Knowledge Bank

Notice is hereby given that, on January 3, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Allegheny-Singer Research Institute has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in names of certain members. 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: NCR Corporation, Parallel Systems, El Segundo, CA, formerly doing business at AT&T Corporation, GIS, Large Systems Solutions Division, El Segundo, CA; NCR Corporation, Human Interface Technology Center, Atlanta, GA, formerly doing business as AT&T Corporation, GIS, Human Interface Technology Center, Atlanta, GA; AT&T Corporation, Business Markets Division, Washington, DC, formerly doing business as AT&T Business Communications Services, Holmdel, NJ; and Allegheny University of the Health Sciences formerly doing business as The Medical College of Pennsylvania and Hahnemann University, Philadelphia, PA. The name under which these parties will operate is the National Medical Practice Knowledge Bank. The general area of planned activity is to conduct cooperative research concerning multimedia information access, retrieval and associated software technologies.

No other changes have been made in either the membership or planned activities of the National Practice Knowledge Bank. Membership in the Bank remains open, and the Bank intends to file additional written notifications disclosing all changes in membership.

On November 17, 1995, Allegheny Singer Research Institute filed its original notification on behalf of the National Medical Practice Knowledge Bank. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6038). The last notification was filed with the Department on December 19, 1995, and was published in the Federal Register on May 14, 1996 (61 FR 6038).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4875 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Management Forum

Notice is hereby given that, on December 9, 1996, 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 Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. 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, the identities of the new members to the venture are as follows: Empresa Brasiletra De Telecommunicacoes S/A–EMBRATEL, Rio De Janeiro, BRAZIL; Informix Software, Inc., Menlo Park, CA; and Lucent Technologies, Holmdel, NJ are Corporate Members. 3Com Corporation, Santa Clara, CA; Data Kinetics Ltd., Ottawa, Ontario, CANADA; Harris Corporation, Melbourne, FL; Nera AS, Kokstad, Bergen, NORWAY; Netro Corp., Santa Clara, CA; Octel Communications Corp., OR-Yehuda, ISRAEL; Syndesis Limited, Richmond Hill, Ontario, CANADA; and TONEX, Inc., Santa Monica, CA are Associate Members. General Atlantic Partners, Greenwich, CT; INRIA Lorraine, Botanique, Villers-Les-Nancy, FRANCE;

International Center for Object Technology, Conroe, TX; K.C. Software, Cincinnati, OH; and Open-Vision Telecom Consulting, Kanata, Ontario, CANADA are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 8, 1988 (53 Fed. Reg. 49615).

The last notification was filed with the Department on September 9, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on November 4, 1996 (61 FR 56709).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4876 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on January 29, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, the following additional parties have become new non-voting members of POSC: XOX Corporation, St. Paul, MN; and Japanese National Oil Company, Tokyo, JAPAN.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on October 22, 1996. A notice was published in the Federal Register pursuant to section 6(b) of the Act on November 29, 1996, (61 FR 60726).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–4832 Filed 2–25–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—United Technologies Corporation & Pratt, Whitney, Government Engines & Space Propulsion Division

Notice is hereby given that, on January 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), United Technologies, Pratt & Whitney, Government Engines & Space Propulsion Division (''P&W''), an unincorporated operating unit of United Technologies Corporation (''UTC''), has filed written notification on behalf of UTC and its participating business units, 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 notification was filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are UTC, Hartford, CT (acting through United Technologies Research Center, East Hartford, CT and Pratt & Whitney GESP, West Palm Beach, FL); SKF USA, Inc., Jamestown, NY (acting through its MRC Bearings Division); Saint-Gobain/Norton Industrial Ceramics Corporation, Worcester, MA (acting through its Norton Advanced Ceramics Division); and the University of Florida, Gainsville, FL (acting through its office of Engineering Research). The parties entered into a Collaboration Agreement effective November 27, 1996 to engage in cooperative research and development in the area of affordable large silicon nitride rolling elements, including, without limitation, the experimental building, finishing, assembly and testing of models, prototypes and equipment, and the development of materials and processes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4831 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–11–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the Federal Register on November 14, 1996, (61 FR 58423), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 6, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4898 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 1996, and published in the Federal Register on April 4, 1996, (61 FR 15119), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

DEA has considered the factors in 21 U.S.C. § 823(a) as well as information provided by other bulk manufacturers, and determined that the registration of Ganes Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 21, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4895 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the Federal Register on November 14, 1996, (61 FR 58424), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Norac, Company, Inc. to manufacturer tetrahydrocannabinols is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated February 6, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4897 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 1996, and published in the Federal Register on November 14, 1996, (61 FR 58424), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Nycomed, Inc. to manufacture meperidine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 7, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4896 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 31, 1996, and published in the Federal Register on August 8, 1996, (61 FR 41427), U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
1–Piperidinocyclohexanecarbonitrile (8603)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

DEA has considered the factors in 21 U.S.C. 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of U.S. Drug Testing, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–4894 Filed 2–26–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two proposed extension information collections: (1) the Notice of Final Payment or Suspension of Compensation Benefits (LS–208) and (2) Request for Earnings Information (LS–426).

Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 28, 1997. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Margaret Sherrill, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. (This is not a toll-free number.), Fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 14(g) of the Longshore and Harbor Workers Compensation Act (LHWCA), the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within sixteen days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. The form requests information regarding the beginning and ending dates of compensation payments, compensation rates, reason payments were terminated and types and amount of compensation payments. Filing of the report is mandatory as failure to do so is subject to a civil penalty.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to notify Office of Workers' Compensation Programs (OWCP) District Offices that payment of compensation benefits has been stopped or suspended in a case. The report is required by law. If the report were not filed, our offices would have no way to determine whether payments have been suspended in a case and therefore would not be able to effectively manage the case file and verify that the injured worker had received all benefits that he/she is entitled to receive under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Agency Numbers: LS–208.

Affected Public: Business or other for-profit.

Total Respondents: 500.

Frequency: On occasion.

Total Responses: 28,000.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 7,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $700.

I. Background

Pursuant to Section 8 of the LHWCA, injured employees shall receive compensation in an amount equal to 66 and two-thirds percent of their average weekly wage. Form LS–426 is used to verify the average weekly wage of an injured employee to determine if the correct compensation rate is being paid. Pursuant to Section 10 of the Act, the average weekly wage of the injured employee may be determined by using those wages earned in the occupation which the injury occurred or wages earned in different occupations. Depending on whether similar or other employment is involved, the average weekly wage will be determined under either Section 10 (a), (b), or (c) of the Act.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information to assure that injured workers are paid at the proper compensation rate. The form benefits the injured worker. It provides a simple method for him/her to provide the OWCP with prior earnings information. If the information were not collected, injured workers would not be paid the proper compensation rate in all cases.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Earnings Information.

OMB Number: 1215–0112.

Affected Public: Individuals or households.

Total Respondents: 1,900.

Frequency: On occasion.

Total Responses: 1,900.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 475.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $665.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: February 21, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–4790 Filed 2–26–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COUNTERINTELLIGENCE CENTER

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: National Counterintelligence Center (NACIC).

ACTION: Proposed establishment of a new Privacy Ace system of records.

SUMMARY: The National Counterintelligence Center (NACIC) proposes to establish a new system of records entitled the National Counterintelligence Center System of Records. Federal Agencies are required by the Privacy Act of 1974 and Office of Management and Budget Circular A–

130, Transmittal Memorandum No. 2, July 15, 1994, to publish notice in the Federal Register of proposed systems of records.

DATES: The proposed new system of records will become effective without further notice 40 days after publication in the Federal Register unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, NACIC invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before April 8, 1997.

FOR FURTHER INFORMATION WRITE: Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, NACIC proposes to establish a new system of records to be maintained at the NACIC Office. The purpose of this notice is to announce the creation and character of the systems of records maintained by NACIC. NACIC was established under the authority of the National Counterintelligence Policy Board (NACIPB), in accordance with Presidential Decision Directive/NSC–24 ''US Counterintelligence Effectiveness,'' dated May 3, 1994. During 1994, in the wake of the Aldrich Ames espionage investigation, President Clinton ordered a review of the overall effectiveness of US counterintelligence (CI).That review resulted in the establishment of a new CI policy and coordination apparatus for the US CI community. PDD/NSC–24 eliminated the National Advisory Group for Counterintelligence (NAG/CI) policy structure under the Director of Central Intelligence (DCI) and established the National Counterintelligence Policy Board (NACIPB) to function as the primary body for addressing national CI policy issues. In addition, the directive established NACIC for the purpose of coordinating national level CI activities. Although located at CIA Headquarters, NACIC is neither a CIA entity, nor is it part of the DCI reporting structure. Rather, NACIC is an autonomous CI entity that reports to the NACIPB and the National Security Council. NACIC, however, does work in close coordination with the DCI's staff and the CIA's Counterintelligence Center (CIA/CIC). NACIC's staff of employees is currently drawn from counterintelligence and security professionals from the FBI, CIA, NSA, the Department of Defense, and the Department of State. Each individual serves on a rotational basis from his/her own agency, with most serving a two year tour. Organizationally, NACIC consists of the Offices of the Director and Deputy Director and three subordinate offices: the Executive Secretariat Office (ESO), the Program Integration Office (PIO) and the Threat Assessment Office (TAO).

It should be noted that as a result of its policy coordination role, NACIC's main concern is with coordination of national level CI activities, not individuals. As a result, individuals mentioned in many of NACIC's records are not clearly identified by name and address.

ESO serves as the secretariat to the NACIPB, the National Counterintelligence Operations Board (NACOB), and their working groups. It coordinates national strategic CI planning efforts by the NACIPB and serves as the contact with CIA's Community Management Staff (CMS) on administrative, logistical, security, and finance matters.

The PIO provides strategic guidance and assesses the effectiveness of CI operations; sponsors seminars and conferences; and establishes and chairs working groups comprised of representatives from federal agencies. PIO's Community Training Branch is responsible for facilitating the development of organizing, and implementing training for the CI community and for private industry. In some cases these have been joint efforts with federal agencies or with private organizations. In addition to publishing its unclassified quarterly newsletter, ''Counterintelligence News and Developments,'' the Training Branch Publishes brochures and reports developed by its Awareness Working Group.

The TAO serves as the focal point for facilitating the production of national-level, foreign intelligence threat assessments; developing and disseminating information relating to foreign intelligence threats; coordinating assessment of damage to US interests resulting from espionage cases; and providing CI community-wide analytic support. TAO's National Needs branch is the Customer Service Branch of NACIC. It serves as a point of contact for non-CI federal agencies, generates products for their use and also for use throughout the CI community. For example, catalog lists are maintained indicating which agencies have conducted threat assessments on various countries or issues, thus saving another agency the expense of conducting its own threat assessment analysis. TAO's Analysis Branch prepares CI community-coordinated threat assessments. In some cases, the assessments are tailored to satisfy an agency's specific concern. In other cases they are conducted in response to a specific incident or activity.

Statement of General Routine Uses

The following routine uses apply to, and are incorporated by reference into each system of records maintained by NACIC. It should be noted that the blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy before the individual record system notices begin.

1. Routine Use-Law Enforcement: In the event that a system of records maintained by NACIC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statue or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

2. Routine Use—Disclosure When Requesting Information: a record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary, to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. Routine Use-Disclosure of Requested Information: A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Congressional: Inquiries from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. Routine Use—Disclosures Required by International Agreements: A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

6. Routine Use-Disclosure to the Department of Justice for Litigation: A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing any officer, employee or member of this component in pending or potential litigation to which the record is pertinent.

7. Routine Use—Disclosure of Information to the General Services Administration: A record form a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

8. Routine Use-Disclosure of Information to the National Archives and Records Administration (NARA): A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Routine Use-Disclosure to the Merit Systems Protection Board: A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals special studies of the civil service and other merit systems, review of OPM or component rules and regulation, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Routine Use—Counterintelligence Purposes: A record from a system of records maintained by this component may be disclosed as a routine use outside the US Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

NACIC–1

SYSTEM NAME:

National Counterintelligence System of Records

SYSTEM LOCATION:

National Counterintelligence Center, 3 WO1 NHB, Washington, D.C. 20505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who are of foreign intelligence or foreign counterintelligence interest and relate in any manner to foreign intelligence threats to US national and economic security.

B. Applicants for, and current and former personnel of NACIC.

C. Individuals associated with NACIC administrative operations or services including pertinent functions such as training, contractors and pertinent persons related thereto.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Director's Correspondence: Correspondence whose contents relates to NACIC's mission, policies, or programs; and correspondence whose contents relates to routine, administrative, or facilitative matters.

2. NACIC Chronoligical Files: Copies of outgoing correspondence, memoranda, and other records signed by the Director, the Deputy Director, and NACIC Office Chiefs.

3. Public Relations Files: Speeches or public statements made by the Director and Deputy Director.

4. NACIC Staff Meeting Records, agendas, minutes, and ''staff meeting highlights.''

5. Progress Reports: six month progress reports submitted to the National Counterintelligence Policy Board outlining activities and accomplishments of the NACIC.

6. Compromised Names Database. The purpose of the database is to notify US intelligence community personnel whose names were potentially compromised as a result of espionage or other foreign intelligence collection activity. NACIC reviews pertinent reports to determine documents that were possibly passed in a particular case and then reviews those documents for names. The database contains the names of persons potentially compromised, date of the memo sent to the person or their employer informing them, the document number of where the person's name came from, document title, and document date.

7. Chronological Files of the PIO: Copies of correspondence, memoranda, and other records generated by PIO and its branches in assessing the effectiveness of CI operations, maintained for reference purposes.

8. Publications, Training Materials and Regional Seminars Records Maintained by PIO's Community Training Branch: Letters of acceptance, enrollment forms, thank you letters, list of attendees, list of speakers, notes, case studies, syllabus, training packet, magazine or newspaper articles, and other records used either for course development purposes or to facilitate the presentation of seminars.

9. Personnel Files: Individual personnel folders of staff employees, consultants and contract employee files consisting of papers documenting personnel actions; performance appraisals; correspondence; training documents; travel documents; contracts; justifications; memoranda; and administrative material. (Many of these files are maintained on a temporary basis while the individuals are detailed to the NACIC. Upon their return to their home agency, their file is returned with them.)

10. Freedom of Information Act (FOIA)/Privacy Act (PA) Requests and Legal Fields: Files created in response for information under the FOIA/PA, consisting of the original request, a copy of the reply thereto, and all related supporting files which may include the official file copy of requested record or copy thereof; files created in response to administrative appeals for release of information denied by the NACIC, consisting of the appellant's letter, a copy of related supporting documents; FOIA/PA Control Files and Report Files; Files relating to an individual's request to amend a record pertaining to the individual as provided for under 5 U.S.C. 552a(d)(2), 552a(d)(3), and to any civil action brought by the individual against NACIC as provided under 5 U.S.C. 552a(g); Privacy Act Report files of recurring reports and one-time information requirements relating to agency implementation including biennial reports to the Office of Management and Budget, and Report on New Systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Records Act of 1950 Title 44, United States Code, Chapter 31, Section 3101; and Title 36, Code of Federal Regulations, Chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(See Statement of General Routing Uses)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in computerized form and hard copy form. Computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

Names are retrievable by automated word or hand search. NACIC will not permit any organization, public or private, outside the NACIC to have direct access to NACIC files. All searches on the NACIC data base and hard files will be performed on site, within NACIC space, by NACIC personnel.

SAFEGUARDS:

Records and databases are maintained in a restricted area within NACIC and are accessed only by NACIC personnel. All employees are checked to insure they have recent background investigations prior to being assigned to NACIC and are cautioned about divulging confidential information or any information contained in NACIC files. Failure to abide by these provisions may violate certain statutes providing maximum severe penalties of a ten thousand-dollar fine or 10 years imprisonment, or both. Employees who resign or retire are also cautioned about divulging information acquired in their jobs. Registered mail is used to transmit routine hard copy records. Highly classified records are hand carried by employee personnel. Highly classified or sensitive privacy information, which is electronically transmitted between NACIC and other offices, is transmitted in encrypted form to prevent interception.

RETENTION AND DISPOSAL:

Records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the NACIC have elapsed.

SYSTEM MANAGER(S) AND ADDRESS:

Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, D.C. 20505.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked ''Privacy Access Request''. Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of NACIC records. A request for access to records must describe the records sought in sufficient detail to enable NACIC personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, and the date of the record or the period in which the record was compiled. The requester will also provide a return address for transmitting the information. Requests for access must be addressed to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, D.C. 20505.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Information and Privacy Coordinator, Executive Secretatiatat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC. 20505.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Notice is hereby given that NACIC intends to exempt, from certain provisions of the Act, those systems of records which are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact, properly classified pursuant to such Executive Order. (5 U.S.C. 552(b)(1), as amended by Public Law 93–502) In addition, pursuant to authority granted in section (j) of the Privacy Act (5 U.S.C. 552a (j)) the Director of NACIC has determined (C) to exempt from notification under subsections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under subsection (j), in those cases where the Information and Privacy Coordinator, determines after advice by responsible components, that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the NACIC may choose to neither confirm nor deny the existence of the record and may advise the individual that there is no record which is available to him pursuant to the Privacy Act of 1974.

Michael Waguespack,

Director, National Counterintelligence Center.

[FR Doc. 97–4853 Filed 2–26–97; 8:45 am]

BILLING CODE 6310–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Public Hearing in Maine: Marine Accident

In connection with its investigation of the ramming of the Portland Bridge at Portland, Maine, by the Liberian Tank Ship JULIE N on September 27, 1996, the National Transportation Safety Board will convene a public hearing at 9:00 a.m., (local time) on March 13, 1997, at the Sheraton Tara Hotel, 363 Maine Mall Road, South Portland, Maine 04106. For more information, contact Pat Cariseo, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: February 25, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–5001 Filed 2–25–97; 10:48 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would change Technical Specifications (TS) 3.7.K, ''Suppression Chamber,'' and

3.8.C, ''Ultimate Heat Sink,'' to restore the maximum allowable water temperature for the Containment Cooling Service Water inlet and the Suppression Pool. This change is required to restore the capability to operate the facility during the warmer months of the year.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed License Amendment presents the results of new safety analyses which were performed using revised values for certain system and equipment performance parameters that more accurately reflect the Dresden Station design. The changes restore operating limits on the Ultimate Heat Sink and Suppression Pool average water temperature consistent with their design and which will permit operation of the facility during the warmer months of the year. The proposed changes directly effect the initial conditions assumed in the safety analyses for the plant, however new analyses demonstrate that the facility will continue to respond in a manner consistent with the existing safety analyses. The methods for demonstrating the adequacy of the existing design are proposed for change and the amendment details the basis for acceptance of the new methods and parameters proposed.

No substantive physical changes to the facility are proposed. The plant will continue to operate in a manner consistent with its original design and the consequences of previously analyzed accidents are not significantly affected by this proposed License Amendment.

The proposed changes do not effect systems which are contributors to initiating events for previously evaluated accidents and therefore, the probability of any accident previously evaluated is not increased by the proposed amendment.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed license amendment for Dresden Station does not create the possibility of a new or different kind of accident than previously evaluated for Dresden Station. The proposed changes merely present and incorporate the results of new analyses which demonstrate the ability of the facility to operate consistent with the safety analyses. No substantive physical changes to the facility are proposed. No substantially new modes of operation have been identified or are introduced by the proposed changes. The changes to plant procedures which are required to support the proposed change are consistent with the operating practices and procedures currently used at the facility.

Based on this, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed license amendment does not significantly effect the margin of safety. The proposed changes merely incorporate new analysis methods and results into the design basis for the facility, as well as restore the limits on UHS [ultimate heat sink] average water temperature and Suppression Pool maximum average water temperature to the limits which have historically existed at the facility. The water temperature limits are changed to permit continued operation of the facility during the warmer months of the year. The new analyses performed include these higher water temperature limits as initial conditions, and utilize new methods and more representative system parameters than existed in previously utilized analytical models of the effected plant systems. The new methods of analysis include modeling of the containment pressure following certain postulated limiting design basis accidents in a time-dependent manner to permit realistic determination of actual pressures which would be expected, as well as the use of improved flow and heat transfer models for determining heat removal rates. An improved representation of actual post-shutdown reactor decay heat is also incorporated into the new analyses.

The new analyses demonstrate that with the proposed changes to the Technical Specifications and the more realistic representation of system parameters, Dresden Station will operate in a manner consistent with the previously existing safety analyses. The proposed changes to the way in which the facility is modeled provide additional margin with regard to some key post-accident parameters, such as postulated Peak Clad Temperature which is demonstrated to be reduced significantly.

Based on operation of the facility consistent with its historical limits, consistent with the limits of the existing safety analyses results, the improved realism and more representative models of actual postulated plant conditions, and the resulting improvements in key post-accident safety limits, this change does not significantly effect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 21st day of February 1997.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4855 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its October 24, 1995, application for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit No. 2, located in New London, Connecticut.

The proposed amendment would have revised the Technical Specifications to defer the next required surveillance to inspect steam generator tubes, from October 20, 1996, to the next refueling outage or no later than October 20, 1997, whichever is earlier.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in

the Federal Register on November 27, 1995 (60 FR 58402). However, by letter dated February 4, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 24, 1995, as supplemented March 7, 1996, and the licensee's letter dated February 4, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager Special Projects Office—Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–4856 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

Northeast Utilities; Notice of Document Availability and Public Meeting

On January 31, 1997, the U.S. Nuclear Regulatory Commission (NRC) received from Northeast Nuclear Energy Company (NNECO), the licensee for the Millstone Nuclear Power Station, its comprehensive plan for resolving employee safety concerns. The plan is in response to an NRC Order. On October 24, 1996, the Director of the Office of Nuclear Reactor Regulation sent an Order to NNECO requiring: (1) A comprehensive plan for resolving the Millstone station employees' safety concerns; and (2) an independent third-party oversight of NNECO's implementation of this plan. Copies of NNECO's Comprehensive Plan pertaining to the employee safety concerns program are available at the Waterford Public Library, ATTN: Mr. Vincent Juliano, 49 Rope Ferry Road, Waterford, Connecticut, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut.

The NRC will hold a public meeting regarding the comprehensive plan for resolving the Millstone station employees' safety concerns. The meeting will be held in the near future at the Waterford Town Hall in Waterford, Connecticut. The meeting will be open to public attendance and will be transcribed. The NRC has elected to hold such a public meeting because of the public's interest.

The structure of the public meeting shall be as follows:

NRC opening remarks
Members of the public comments and questions
NRC closing remarks
Meeting concludes

The purpose of this public meeting is to obtain comments from members of the public for NRC staff use in evaluating NNECO's comprehensive plan addressing employee safety concerns. The staff will not offer any preliminary views on its evaluation of the comprehensive plan. The public meeting will be chaired by a senior NRC official who will limit presentations to the above subject.

A meeting notice will be issued stating the date and time of the meeting.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4854 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would defer implementation of Surveillance Requirement 3.3.5.6 of Technical Specification 3.3.5, ''Engineered Safety Features Actuation System (ESFAS) Instrumentation'' for the 30 subgroup relays identified in Attachment C of the licensee's February 18, 1997, letter to no later than the upcoming SONGS Unit 3 Cycle 9 refueling outage (currently scheduled to begin on April 12, 1997).

The exigent circumstances for this TS amendment request exist because it would avoid an undesirable transient associated with an unnecessary plant shutdown and this would minimize potential safety consequences and operational risks associated with such action. In the event of a planned or unplanned shutdown of Unit 3, prior to the Cycle 9 refueling outage, testing in accordance with Surveillance Requirement 3.3.5.6 will be completed prior to increasing in Modes from that shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would defer completion of Surveillance Requirement (SR) 3.3.5.6 of Technical Specification (TS) 3.3.5 for 30 Emergency Safety Feature Actuation System (ESFAS) subgroup relays until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change and no assumptions or results of any accident analyses are affected. Based on other surveillance testing, the response time margin available for these subgroup relays, results of response time testing on Unit 2 relays, and the history of no failures since the 1989 to 1993 time period, the capability of these ESFAS subgroup relays to perform their specified safety function has been demonstrated and they are operable.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would defer completion of SR 3.3.5.6 of TS 3.3.5 for 30 ESFAS subgroup relays until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change. No equipment change or operating procedure change is being made. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would defer completion of SR 3.3.5.6 of TS 3.3.5 for 30 ESFAS subgroup relays until the Unit 3, Cycle 9 refueling outage. Based on other surveillance testing, the response time margin available for these subgroup relays, and results of testing on Unit 2 relays, the capability of these ESFAS subgroup relays to perform their specified safety function has been demonstrated and they are operable. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 18, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 21st day of February 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4857 Filed 2–26–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Standard Form 87

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for a clearance of an information collection. Standard Form 87, Fingerprint Chart, is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct checks of the Federal Bureau of Investigation (FBI) fingerprint files as required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or required or authorized under other authority.

It is estimated that 250,000 individuals will respond annually for a total burden of 20,833 hours. To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received by March 31, 1997.

ADDRESSES: Send or deliver comments to—

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street NW., Room 5416, Washington, DC 20004

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–4841 Filed 2–26–97; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Hospital Insurance Benefits; OMB 3220–0082 Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application For Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes a minor editorial change to Forms AA–6, AA–7 and AA–8 to incorporate language required by the Paperwork Reduction Act of 1995. The RRB estimates that 180 Form AA–6's, 50 Form AA–7's, and 10 Form AA–8's are completed annually. The completion time for all three forms is estimated at 8 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–4905 Filed 2–26–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Eaton Vance Corp., Non-voting Common Stock, $0.625, Par Value) File No. 1–8100

February 21, 1997.

Eaton Vance Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the non-voting common stock is listed on the New York Stock Exchange, Inc. (''NYSE''), and an application on Form 8–A for registration of the Company's non-voting common stock on the NYSE was declared effective by the Commission on August 15, 1996. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities. Also, the Company cannot justify the expense of being listed on two exchanges and thereby, wishes to withdraw from the BSE.

Any interested person may, on or before March 14, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4861 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22523; 812–10424]

HVA Money Market Fund, Inc. and Hartford U.S. Government Money Market Fund, Inc.; Notice of Application

February 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: HVA Money Market Fund, Inc. (''HVA Fund'') and Hartford U.S. Government Money Market Fund, Inc. (''U.S. Government Fund'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the HVA Fund to acquire substantially all of the assets of the U.S. Government Fund (together, the ''Funds''). Because of certain affiliations, the Funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on November 8, 1996 and amended on February 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1997, and should be accompanied by proof of service on the 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: c/o ITT Hartford Group, Inc., Hartford Plaza, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The HVA Fund is a Maryland corporation registered under the Act as an open-end, diversified management investment company. Shares of the HVA Fund are sold to separate accounts of Hartford Life Insurance Company (''Hartford Life'') and ITT Hartford Life and Annuity Insurance Company (''Hartford Life and Annuity'') to fund benefits under variable annuity contracts and variable insurance policies issued by Hartford Life and Hartford Life and Annuity.

2. The U.S. Government Fund is a Maryland corporation registered under the Act as an open-end, diversified management investment company. Shares of the U.S. Government Fund are sold to separate accounts of Hartford Life.

3. The HVA Fund has sold shares to the following separate accounts: Hartford Life Separate Account One, Hartford Life and Annuity Separate Account One, Hartford Life Separate Account Two, and Hartford Life DC Variable Account I (the ''Variable Annuity Separate Accounts''), which are separate accounts established to receive and invest premiums paid under variable annuity contracts issued by Hartford Life and/or Hartford Life and Annuity; and variable life separate accounts of Hartford Life.

4. The U.S. Government Fund currently sells its shares only to Hartford Life Separate Account Two and Hartford Life DC Variable Account I, two of the Variable Annuity Separate Accounts.

5. The variable insurance policies and variable annuity contracts offered through the separate accounts are referred to collectively as, ''Contracts.'' Owners of Contracts (''Contractowners'') offered through Hartford Life Separate Account Two and Hartford Life DC Variable Account I may choose to have Contract value allocated to sub-accounts of such accounts. These sub-accounts invest in shares of the Funds.

6. Hartford Fire Insurance Company is a wholly-owned subsidiary of ITT Hartford Group, Inc. (''ITT Hartford''). Hartford Life is a wholly-owned subsidiary of Hartford Fire Insurance Company. Hartford Life and Annuity is a wholly-owned subsidiary of Hartford Life. The Hartford Investment Management Company (the ''Adviser'') is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

7. Pursuant to the Agreement and Plan of Reorganization (the ''Plan''), applicants propose that the U.S. Government Fund will transfer all of its

existing assets to the HVA Fund. In consideration thereof, the HVA Fund agrees (a) to assume and pay all of the obligations and liabilities of the U.S. Government Fund to the extent that they exist on or after the closing date (as defined below) of the reorganization and (b) to deliver to the U.S. Government Fund full and fractional shares of common stock of the HVA Fund equal to that number of full and fractional shares of the U.S. Government Fund then outstanding as determined based on the relative net asset value per share of the funds as of the close of the New York Stock Exchange on the last business day immediately preceding the reorganization (the ''Closing Date''). At the Closing Date, the U.S. Government Fund will liquidate and distribute *pro rata* to its shareholders the HVA Fund shares received pursuant to the reorganization.

8. The reorganization will also require the consolidation of the corresponding sub-accounts of the Variable Annuity Separate Accounts. Hartford Life will carry out this consolidation on the Closing Date immediately after the completion of the HVA Fund's acquisition of the U.S. Government Fund, by issuing units of interest in the HVA Fund sub-accounts on a *pro rata* basis to owners of Contracts who, prior to the reorganization, owned units in the U.S. Government Fund sub-accounts, in exchange for their units of the disappearing sub-accounts. Although this ''exchange'' would be nothing more than a bookkeeping exercise, applicants believe that it conceivably could be considered to involve the issuance of new units of the HVA Fund sub-accounts in exchange for the assets of the U.S. Government Fund sub-accounts. The number of full and fractional units of interest of the HVA Fund sub-accounts to be issued will be determined by dividing the aggregate value of the HVA Fund shares issued to the U.S. Government Fund sub-account, by the unit value of the HVA Fund sub-account computed on the Closing Date using the valuation methods set forth in the above-noted separate accounts' current prospectuses.

9. The boards of directors of the Funds (the ''Boards'') have determined that the interests of existing Contractowners indirectly invested in the Funds will not be diluted under the Plan and that the reorganization would be in the best interests of the funds and their shareholders. In addition, the directors of the U.S. Government Fund noted, in particular, (a) potential benefits of the reorganization to shareholders of the U.S. Government Fund and Contractowners with Contract values allocated to Hartford Life DC Variable Account I and Hartford Life Separate Account Two; (b) the compatibility of investment objectives, policies, restrictions, and investment holdings of the U.S. Government Fund and the HVA Fund; (c) the terms and conditions of the Plan which might affect the price of outstanding shares of the U.S. Government Fund or interests of Contractowners indirectly invested therein; and (d) direct or indirect costs to be incurred by the U.S. Government Fund or shareholders thereof or Contractowners who have indirectly invested thereon (all of which will be borne by Hartford Life or Hartford Life and Annuity). Finally, applicants note that the larger aggregate net assets resulting from the reorganization should enable the combined entities to realize significant benefits associated with economies of scale, increased investment opportunities, and enhanced portfolio diversification and liquidity.

10. The Boards, including a majority of those directors who are not ''interested persons'' (as defined in the Act), unanimously approved the Plan on October 22, 1996. The Plan is subject to the approval of shareholders of the U.S. Government Fund, and a special meeting of the shareholders is scheduled to be held on June 17, 1997.

11. Applicants agree not to make any material changes to the Plan that affect the application without the prior approval of the Commission. Applicants also will not waive, amend, or modify any provision of the Plan that is required by state or federal law in order to effect the reorganization.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person, in relevant part, as: (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

3. Rule 17a–8 under the Act exempts from section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers.

4. ITT Hartford (through the separate accounts) technically owns 100% of the shares of each Fund. ITT Hartford therefore may be an affiliated person of each Fund and the Funds may each be ''second-tier'' affiliates of one another. Moreover, the Funds may be direct affiliates of each other if they are considered under the ''common control'' of ITT Hartford. Because of these potential affiliations, the Funds may not be able to rely on rule 17a–8. In addition, the separate accounts cannot rely on rule 17a–8 because they do not have boards of directors/trustees to make the findings required by rule 17a–8.

5. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, 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 the registered investment company concerned and with the general purposes of the Act.

6. Applicants believe that the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also believe that the proposed reorganization of the Funds is consistent with the investment policies of the Funds as recited in their registration statements and with the general purposes of the Act.

7. Applicants submit that the terms of the proposed reorganizations, including the consideration to be paid and received, are reasonable and fair to the applicable separate accounts, including the sub-accounts investing in the Funds and to shareholders and Contractowners invested therein, and do not involve overreaching on the part of any person concerned. Furthermore, the proposed reorganizations will be consistent with the policies of the separate accounts as recited in their registration statements

and with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4858 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26673]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 21, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 17, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company, et al. (70–8987)

Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156, Public Service Company of Oklahoma (''PSO''), 212 E. 6th Street, Tulsa, Oklahoma 74119, and West Texas Utilities Company (''WTU'' and, collectively with SWEPCO and PSO, the ''Applicants''), 301 Cypress Street, Abilene, Texas 79601, each an electric utility subsidiary of Central and South West Corporation, a registered holding company, have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

The Applicants propose to lease to nonaffiliated third parties excess space in the Applicants' respective office buildings and other properties owned or leased by the Applicants, but not currently used in the normal course of their operations.

The properties to be leased shall include the following types of properties: office space in buildings currently owned or leased by the Applicants; area or local offices, which typically consist of less than 10,000 square feet; service centers which include office and warehouse facilities and which typically consist of less than 20,000 square feet; district or division offices, which typically consist of less than 25,000 square feet; excess capacity in the Applicants' training facilities; miscellaneous facilities which are being held for future use or sale and which typically consist of less than 10,000 square feet; and other improved and unimproved land.

All rental payments from nonaffiliated third parties for excess space are, and in the future will be, accounted for as rent from property devoted to electric operations for the Applicants that own the relevant building or property.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4859 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22524; International Release No. 1057; 812–10278]

Randgold and Exploration Company Limited, Inc.; Notice of Application

February 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Randgold and Exploration Company Limited, Inc.

RELEVANT ACT SECTIONS: Applicant seeks an order under sections 2(b) (9) and 3(b) (2) of the Act, or alternatively, under section 6(c) granting an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it controls certain companies, notwithstanding that it owns less than 25% of the voting securities of these companies, and declaring that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. In the alternative, applicant seeks an order exempting it from all provisions of the Act.

FILING DATES: The application was filed on July 26, 1996, and amended on November 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 5 Press Avenue, Johannesburg 2025, P.O. Box 82291, Southdale 2135, South Africa.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a South African corporation, is a foreign private issuer whose common shares are listed on the Johannesburg Stock Exchange. Applicant is engaged in the gold mining and exploration business in Africa. Applicant has a current market capitalization of over R985 million (US $229 million) and reported net earnings of R35 million (US $8 million) for the last four fiscal quarters ended June 30, 1996. Applicant, together with its direct subsidiaries, has over 160 employees worldwide and just over 40,000 employees worldwide if employees of the Controlled Companies (as hereinafter defined) are included. Substantially all of its employees are engaged in applicant's business of gold mining and exploration. Applicant and its Controlled Companies produce more

than 50 metric tons (1.6 million ounces) of gold per year, making Randgold one of the world's top ten gold producers.

2. Applicant has four direct subsidiaries (the ''Direct Subsidiaries''), each of which is engaged in the gold mining and exploration businesses: Randgold Resources Limited, a majority-owned (90%) subsidiary, TGME, majority-owned (75%) subsidiary, First Westgold, a fully-owned subsidiary, and Rand Mines Windhoek, a fully-owned subsidiary. Applicant also has substantial assets (the ''Direct Assets'') owned directly or by a fully-owned subsidiary consisting primarily of mineral rights located in southern Africa. The Direct Subsidiaries and Direct Assets as a group account for approximately 45% of applicant's total assets.

3. Applicant also has a cash position of R86 million (US $19 million), and R123 million (US $27 million) held in short-term commercial instruments in South Africa, accounting for 7% and 10% of applicant's total assets, respectively.[1] Applicant's short-term investments are comprised of short-term commercial instruments for which a highly liquid market exists.

4. Applicant also owns minority interests in eight companies, either directly or through fully-owned subsidiaries, all of which are engaged in the gold mining business: Blyvooruitzicht (10.5% common and 11.1% of outstanding options), D.R.D. (23.1% common and 21.6% preferred, giving 23% of the total voting control of D.R.D., and 16.5% of outstanding options), Harmony (18.1% common), E.R.P.M. (14.7% common), Grootvlei (19.8% common), Stilfontein (10% common), Buffelsfontein (6.8% common), and West Wits (3.5% common, 40.3% preferred, and 40.3% of the outstanding options). Through Harmony, applicant also owns 25% of the common stock of Unisel, and through a fully-owned subsidiary (Rand Mines Windhoek), owns a 10% interest in a joint venture named Navachab. Unisel and Navachab also are engaged in the gold mining business. Unisel (but not Navachab), along with the eight companies referred to above in which applicant owns a minority interest, are referred to herein as the ''Controlled Companies.'' To its knowledge, applicant is the largest stockholder of each of the Controlled Companies.[2]

5. Applicant has the direct or indirect power to appoint all of the directors of the Controlled Companies. At the instance of applicant, each Controlled Company has in place a board of directors made up of ten individuals, with each director serving a staggered three year term. For each Controlled Company's board, applicant selects eight directors, seven of whom are ''inside'' directors of applicant's board of directors and one of whom is an ''outside'' director of applicant's board of directors. Each Controlled Company also has two members of its own management team that sit on its board, both of whom are hired and selected by applicant.

6. Applicant has entered into service agreements with each of the Controlled Companies, each with substantially similar terms pursuant to which applicant derived R26 million during the last four fiscal quarters (27% of total revenues). Under the agreements, applicant provides specialized strategic, managerial, financial, information systems, legal, secretarial, and human resources services to the Controlled Companies. Previously, such services were provided to the Controlled Companies under management agreements with applicant that required payments based upon a percentage of gold sales, capital expenditures, and other items regardless of the actual cost of services provided by applicant. The new service agreements set prices for the services to be rendered by applicant based upon their actual cost. Amounts due under the service agreements are paid in cash. Applicant and the Controlled Companies entered into the new arrangement in order to provide operational and financial flexibility to the Controlled Companies to the belief that this will allow each Controlled Company to maximize efficiency and profits rather than to reduce ultimate control by applicant.

7. Dividends generally are not paid on the shares of the Controlled Companies. Applicant has received an aggregate of R3 million (US $666,000) in dividends from shares of the Controlled Companies in the last four fiscal quarters.

8. Applicant also has minority interests in three additional companies which applicant does not control. These interests in the aggregate total less than 3% of applicant's total assets.

Applicant's Legal Analysis

1. Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities and, therefore, is not an investment company as defined in the Act. Applicant also seeks an order under section 2(a)(9) declaring that it controls the Controlled Companies even though it owns less than 25% of their voting securities. In the alternative, applicant seeks an order under section 6(c) of the Act exempting it from all provisions of the Act.

2. Under section 3(a)(3) of the Act, an issuer is an investment company if it ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' Section 3(a) defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies. Applicant assumes for purposes of the application that its short-term investments are investment securities under section 3(a)(3) of the Act. Under this assumption, approximately 52% of applicant's total assets (exclusive of cash) are, or could be, deemed to be investment securities. Accordingly, applicant may be deemed to be an investment company within the meaning of section 3(a)(3).

3. Section 3(b)(2) provides that, notwithstanding section 3(a)(3), the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. Applicant believes that it meets the requirements of section 3(b)(2) because it is primarily engaged in the business of a natural resources group focused on gold, through its wholly-owned or majority-owned subsidiaries, or through companies which it controls. Because applicant owns less than 25% of the voting securities of the Controlled Companies, however, a determination under section

[1] Applicant states that such large cash and liquid investment positions are customary for South African gold mining companies because it is deemed imprudent within the industry to finance exploration and new mines through debt and, consequently, such expenditures are funded through cash or equity.

[2] While applicant believes it is the largest shareholder of each of the Controlled Companies, it cannot be certain because most shareholdings are held by nominees and local law does not require disclosure of ultimate beneficial ownership of large holdings.

2(a)(9) that applicant controls the Controlled Companies is a prerequisite to the ultimate determination of applicant's investment company status.

4. Section 2(a)(9) defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that owners of 25% or less of a company's voting securities do not control such company. This presumption may be rebutted by evidence of control.

5. Applicant argues that a finding of control under section 2(a)(9) is warranted for the following reasons:

a. Applicant has complete control over the nomination process for each of the Controlled Companies' board of directors. Each board meets four times per year, and one of ''applicant's directors'' chairs all meetings of these boards. Decisions made by the board of directors of each Controlled Company generally require a majority vote.

b. Each Controlled Company also has a monthly ''management meeting'' at which at least three of ''applicant's directors'' are present, one of whom is responsible for chairing the meeting.

c. Applicant's control over the Controlled Companies is demonstrated by its practice of causing these companies to acquire contiguous mines and/or mineral rights to integrate with a given Controlled Company's operations. These acquisitions are negotiated by applicant on behalf of the acquiring Controlled Company and it directs the due diligence efforts. Applicant also negotiates and approves all major supply agreements for the Controlled Companies.

d. Applicant also requires the Controlled Companies to submit annual strategic plans in its prescribed format for applicant's approval, as well as detailed monthly management reports. At least weekly, management of the Controlled Companies and officers of applicant hold discussions regarding the status of various affairs at the Controlled Companies and miscellaneous operational issues.

6. Applicant states that its hands-on involvement in the affairs of the Controlled Companies is consistent with the background, training, experience and expertise of applicant's officers and directors in the gold, natural resources and related sectors. Applicant believes that it has effective control of the Controlled Companies' management, strategy and operations. Applicant asserts that its structure reflects, among other things, the manner in which South African gold mining companies tend to spread risk, as well as the laws and business customs of South Africa. Accordingly, applicant believes that it controls the Controlled Companies within the meaning of section 2(a)(9) of the Act.

7. In determining whether applicant is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) the issuer's historical development; (b) its public representations or policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

a. *Historical Development.* Applicant is the successor to a line of companies that have been in existence since 1893 and that had their origin in the operation of gold mines. Historically, applicant managed its business much the same as most South African gold holding companies did, i.e., through detailed and extremely strict management contracts. Applicant terminated these agreements in favor of the less restrictive serviced agreement arrangement described above. Applicant believes (and has already seen initial positive results) that the new arrangement will allow each Controlled Company to become more efficient and maximize its profits. Applicant asserts that today it exercises the same effective control over all of its constituent companies through representation on the Controlled Companies' boards of directors or cross-directorships as it has in the past. Applicant also argues that its relatively large holdings of short-term investment securities is a standard practice in the industry because it is deemed too speculative to take on debt to finance exploration activities. For example, the use of gold properties as collateral for any loan makes the value of such collateral dependent upon the price of gold, which in turn makes such loans difficult and expensive to obtain.

b. *Public Representations of Policy.* Applicant states that it does not hold itself out as an ''investment company'' within the meaning of the Act, and has never been a registered investment company (or subject to any analogous regulatory scheme). Applicant has consistently held itself out as a gold mining and exploration business in all its communications with shareholders and the public.

c. *Activities of Officers and Directors.* Applicant states that its management, on the whole, spends substantially all of its time actively involved in the gold mining and exploration business. Of applicant's fourteen directors, only one director, the Finance Director, spends any meaningful amount of time (less than 5%) monitoring applicant's securities holdings and cash management activities. The bulk of such duties consists of supervising the activities of an outside investment bank which has been entrusted with investing applicant's cash. Each of applicant's executive directors has substantial experience in applicant's gold mining and exploration business, rather than any background in investing or portfolio management. Applicant is represented by its directors and officers of all of the boards of directors of the Direct Subsidiaries and Controlled Companies. In those companies, applicant's directors and officers dominate management's strategic decision making and play a leading role in other essential operational functions.

d. *Nature of Assets.* As of June 30, 1996, applicant had total assets of R1211 (US $282 million).[4] For purposes of analysis under section 3(b)(2), 45% of applicant's total assets were operating assets attributable to its Direct Subsidiaries and Direct Assets, and 35% of applicant's total assets were attributed to its Controlled Companies.[5]

e. *Sources of Income.* In applicant's four fiscal quarters ending June 30, 1996, applicant derived approximately 14% of its revenues and 4% of its net income from its Direct Subsidiaries, Direct Assets, service agreements and other operations.[6] Revenues from the service agreements alone accounted for 7.7% of its revenues and 3.6% of its net income over such period. In the same period, applicant derived approximately 68% of its revenues and 23% of its net income from Controlled Companies. In that same period, applicant derived 18% of its revenues and 69% of its net income from extraordinary items, including cancellation of the management agreements and the sale of shares of Controlled Companies.[7] The expected effect of the cancellation of the

[3] *Tonopah Mining Company of Nevada,* 26 S.E.C. 426, 427 (1947).

[4] The methods used in the valuation of applicant's assets were in accordance with section 2(a)(41) under the Act.

[5] The remaining 20% of total assets are made up of 7% in cash and cash equivalents, 10% in short-term investments, and 3% in traditional investment securities.

[6] All figures used in the determination of net income are based upon equity accounting methods pursuant to which the revenues and income of the Controlled Companies are included in applicant's revenues and income in proportion to applicant's equity interests in such companies.

[7] Applicant states that the extraordinary items described above were generally not present during the prior two periods ended June 30, 1995, and June 30, 1994, and applicant believes that during those periods revenues from Direct Subsidiaries, Direct Assets, other operations and Controlled Companies would account for the majority of applicant's revenues and net income.

management contracts will be to reduce fees from Controlled Companies by approximately 56%. Applicant expects, however, a corresponding reduction of costs due to the restructuring that occurred. The immediate net effect of the change was the payment to applicant of termination fees under the agreements, which fees are included in extraordinary income as described above. While revenues from applicant's Direct Subsidiaries, Direct Assets, service agreements and other operations, and dividends from Controlled Companies' stock are a substantial portion of applicant's total revenue, they account for a significantly smaller portion of applicant's net income. This largely reflects (a) the strategy of applicant and its Controlled Companies to retain earnings for future operations and growth, rather than to distribute earnings to shareholders in the form of dividends, (b) the fact that gold sales made directly by applicant are relatively small in relation to applicant's total activities, which consist largely of exploration properties, and (c) the fact that virtually all of applicant's expenses relate to the activities of its Direct Subsidiaries and its Direct Assets.

8. In the alternative to exemptive relief under section 3(b)(2), applicant requests an order under section 6(c) exempting applicant from all provisions of the Act and the rules and regulations thereunder. Section 6(c) authorizes the Commission to issue a conditional or unconditional exemption from any provision of the Act or rule thereunder if the exemption is ''necessary or appropriate in the public interest'' and is ''consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' Applicant states that it was structured for valid economic and legal reasons and not with the Act in mind. Consequently, applicant believes that it would be inappropriate and detrimental to applicant and its shareholders to be treated as an investment company and made subject to the Act. Furthermore, applicant believes that it is not the type of company and does not engage in the activities the Act was designed to regulate. Accordingly, applicant submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4860 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–83821; File No. SR–NASD–97–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Scope of the Uniform Practice Code

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on February 20, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[2] 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 is proposing to amend Rule 11100 of the Uniform Practice Code (''Code'') of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to clarify the scope of the Code and the exception for transactions settled through a clearing agency. Below is the text of the proposed rule change. Proposed new language is in italics.

11100. Scope of Uniform Practice Code

(a) All over-the-counter secondary market transactions in securities *(including restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933)* between members, *including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members* shall be subject to the provisions of this Code except:

(1) transactions in securities between members which are compared, cleared or settled through the facilities of a registered clearing agency, *except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply.*

* * * * *

II. Self-Regulatory Organizations 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

(a) The Code provides detailed requirements for many procedures and practices related to the operational aspects of members' securities business, including requirements for deliveries, payments, dividends, rights, interest, exchange of confirmations, assignments, powers of substitution, computation of interest, due bills, transfer fees, ''when, as and if issued'' trading, ''when, as and if distributed'' trading, market to market, buy-ins, close-outs, accounts transfers, settlement of syndicate accounts, etc.

The introductory language in paragraph (a) of Rule 11100 states the general standard that ''all over-the-counter secondary market transactions in securities between members shall be subject to the provisions of this Code. * * *'' The focus of the language only on ''transactions in securities'' does not encompass those provisions of the current Code that address the rights and liabilities of the members participating in the transaction and provide procedures that are not related to securities transactions, e.g., the setting of ex-dates and the transfer of customer accounts. In addition, the exception in subparagraph (a)(1) of Rule 11100 for securities transactions cleared through a registered clearing agency does not address the situation where the rules of the clearing agency require compliance with the rules of the applicable market. In this latter case, the clearing agency exception is technically not available since the clearing agency requires that

[1] 15 U.S.C. § 78s(b)(1).

[2] The proposed rule change was originally filed on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. This document provides notice of the proposed rule change as amended. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated February 20, 1997.

the Code or the rules of the relevant market apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, members have inquired as to whether the Code is applicable to transactions in restricted securities.

In order to provide clarity on the applicability of the Code, NASD Regulation is proposing to amend the Code to expand the introductory language of paragraph (a) of Rule 11100 to state that:

(i) the application of the Code to secondary market transactions in securities includes the regulation of the ''rights and liabilities of the members participating in the transaction'';

(ii) the Code also applies to ''those operational procedures that affect the day-to-day business of members'';[3] and

(iii) the securities transactions covered by the Code include transactions in ''restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933.''

As a result of this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. In this connection, NASD Regulation is also clarifying the securities sold offshore pursuant to the exemption from registration provided by Regulation S are considered to be subject to the requirements of the Code when those securities are traded in the U.S. after the expiration of the restricted period. It is not believed any change to the Code is necessary with respect to this clarification, as the Code clearly applies to all registered and unregistered secondary securities market transactions between members, which would include securities formerly sold in a Regulation S transaction.

In addition, NASD Regulation is proposing to amend subparagraph (a)(1) of Rule 11100 to clarify that the exception for transactions in securities between members that are compared, cleared or settled through the facilities of a registered clearing agency does not apply where the rules of the clearing agency provide that the rules of other organizations shall apply.

NASD Regulation believes that these changes will make clear the broad scope and applicability of the Code and permit members to look to the Code for guidance regarding transactions settled through a clearing agency, where the clearing agency has adopted a rule directing that the rules of the governing market apply to the transaction.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that the proposed rule change clarifies the application of the Uniform Practice Code to establishing the liabilities of parties to a transaction, to restricted securities, to the operational procedures that affect the day-to-day business of members, and to transactions settled through a clearing agency where the rules of the clearing agency direct that the rules of the governing market apply to the transaction. NASD Regulation believes the proposed rule change is consistent with the Association's obligations to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, in the public interest.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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–97–06 and should be submitted by March 20, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4862 Filed 2–26–97; 8:45 am]

BILLING CODE 8010–01–M

[3] This language is drawn from Article XV, Section 1 of the NASD By-Laws which authorizes the Association to adopt the Uniform Practice Code which states that the adoption of such a Code is for the purpose that ''the transaction of day-to-day business by members may be simplified and facilitated * * *.''

[4] 15 U.S.C. § 78o–3.

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2925; Amendment #2]

California; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated February 14, 1997, the above-numbered Declaration is hereby amended to include Kings and San Luis Obispo Counties in the State of California as a disaster area due to damages caused by severe storms, flooding, and mud and landslides beginning on December 28, 1996 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Santa Barbara in the State of California may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 5, 1997, and for loans for economic injury the deadline is October 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4925 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area 2928; Amendment 1]

Oregon; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated February 14, 1997, the above-numbered Declaration is hereby amended to include the Counties of Coos, Douglas, Lake, and Lane in the State of Oregon as a disaster area due to damages caused by winter storms, land and mudslides, and flooding beginning on December 25, 1996 and continuing through January 6, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Benton, Harney, Lincoln, and Linn in the State of Oregon may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 24, 1997, and for loans for economic injury the deadline is October 23, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4924 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area 2927; Amendment 2]

Washington; Declaration of Disaster Loan Area

In accordance with notices from the Federal Emergency Management Agency, dated February 6 and 11, 1997, the above-numbered Declaration is hereby amended to include the Counties of Asotin, Clark, Jefferson, Pend Oreille, and Whatcom in the State of Washington as a disaster area due to damages caused by winter storms, land and mudslides, and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on December 26, 1996 and continuing through February 10, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Garfield in the State of Washington and Columbia in the State of Oregon may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 18, 1997, and for loans for economic injury the deadline is October 17, 1997. The economic injury number for the State of Oregon is 935600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–4923 Filed 2–26–97; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Proposed Out-of-Basin Diversion Policy and Protocol; Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Public hearing on addition to comprehensive plan.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing in conjunction with its regular meeting on March 20, 1997. This hearing will be for the purpose of receiving public comments on the inclusion of the proposed Out-of-Basin Diversion Policy and Protocol in the Commission's *Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin.*

Under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 *et seq.*, the Commission must review and approve all diversions of water from the Susquehanna River Basin. Up to this time, the Commission has adopted no formal policy position or statement on how it will evaluate proposed diversions, but has relied on positions articulated in past docket decisions. This policy establishes the principles that the Commission will consider in the approval of diversions and adds a protocol describing how those principles will be applied. Written comments will also be accepted and made a part of the hearing record.

DATES: The public hearing will be held on March 20, 1997, beginning at approximately 9:00 a.m. Written comments on the proposed policy should be submitted by March 20, 1995.

ADDRESSES: The public hearing will be held at the Best Western Country Cupboard Inn, Rt. 15 North, Lewisburg, Pa.. Copies of the entire policy statement and protocol may be obtained upon request to the Commission at 1721 N. Front Street, Harrisburg, Pa. 17102–2391, (717)238–0423.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary, SRBC, 717–238–0423.

Dated: February 21, 1997.

Richard A. Cairo,

General Counsel/Secretary.

[FR Doc. 97–4938 Filed 2–26–97; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Area of the Americas; Notice and Request for Views

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to provide views on U.S. objectives for the free trade area of the Americas.

SUMMARY: The Trade Policy Staff Committee is issuing this notice to request advice and information useful in the preparation for the meeting of Western Hemisphere trade ministers, to be held on May 16, 1997 in Belo Horizonte, Brazil. At the Summit of the Americas, leaders of the Western Hemisphere agreed that countries should conclude negotiation of a ''Free Trade Area of the Americas'' by 2005. The trade ministers were asked to oversee the negotiation.

DATES: In order to receive full consideration, comments must be received no later than: March 24, 1997. This will make them timely for consideration as U.S. positions for the Ministerial meeting are developed. Any comments, however brief, would be welcome. The U.S. Government will continue to welcome advice as work on the FTAA proceeds.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Karen James Chopra (202) 395–5190.

SUPPLEMENTARY INFORMATION:

Background

The 34 democratically-elected leaders of the Western Hemisphere gathered at the first Summit of the Americas in Miami in December 1994. At the Summit, leaders agreed that countries should conclude negotiation of a ''Free Trade Area of the Americas'' (FTAA) by 2005 and make concrete progress towards that goal by 2000. They directed their trade ministers to oversee the process of constructing the FTAA.

The first Western Hemisphere Trade Ministerial was held in Denver in June 1995. The United States Trade Representative and the other 33 Ministers in the Hemisphere responsible for trade agreed to the Denver ''Joint Declaration.'' This advanced the Summit of the America's objective of establishing the FTAA by 2005. The Denver Declaration adopted a set of principles and created a work program to prepare for negotiation of the FTAA—including the establishment of seven working groups. Four more working groups were created at the second Western Hemisphere Trade Ministerial, which was held in Cartagena, Colombia in March 1996. The eleven working groups established to date are: Investment, Standards and Technical Barriers to Trade, Subsidies/Anti-dumping/Countervailing Duties, Smaller Economies, Government Procurement, Intellectual Property Rights, Services, Competition Policy, Sanitary and Phytosanitary (SPS) Measures, Customs Procedures and Rules of Origin, and Market Access.

In the Cartagena ''Joint Declaration'', the Ministers mandated that Vice Ministers make recommendations on when and how to launch the FTAA negotiations and on the approach to negotiations. Also, concrete proposals on near-term practical steps toward hemispheric economic integration (e.g. business facilitation actions) are to be reported to the Ministers at the next Ministerial. The Ministers provided overall guidance to further the FTAA process and another detailed plan of work for the eleven working groups. Copies of the Miami, Denver and Cartagena Declarations can be found on the Internet at: http://www.ustr.gov/index.html.

The third Western Hemisphere Trade Ministerial will take place on May 16 in Belo Horizonte, Brazil. Ministers have requested that Vice Ministers prepare recommendations on how and when to launch the negotiations to construct the FTAA.

Key Issues

To make preparations for the Belo Horizonte Ministerial as relevant as possible, the U.S. Government is seeking advice and views from the public. Any views on the FTAA process are welcome, but of particular interest would be input on the following issues:

- What should U.S. objectives be for the FTAA process as a whole, and what should we seek to achieve at the next meeting in Belo Horizonte to make progress towards that objective?
- What major issues are not currently addressed adequately by international disciplines that could be addressed in the FTAA?
- Are there particular advantages/disadvantages to negotiating or implementing certain agreements or codes affecting either specific sectors (e.g. telecommunications) or disciplines (e.g. investment) before the FTAA negotiations are completed in the year 2005?
- What concrete steps toward economic integration would most benefit U.S. interests overall or the interests of specific industries or groups?
- What impediments are most detrimental to the U.S. companies doing business and how can hemispheric disciplines remove them?
- Has your company or organization experienced particular problems in the region of which the U.S. Government should be aware as it goes through the FTAA process?
- To what extent have the subregional arrangements (Mercosur, Andean Pact, Central American Common Market, Caribbean Community) affected your interests in or exports to Latin America and the Caribbean?
- What measures should the ministers consider to ensure that private sector advice from throughout the Hemisphere is received and incorporated into the FTAA process?
- Do you have any concrete proposals for near-term practical steps toward hemispheric economic integration (e.g. business facilitation actions)?

Written Comments: All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington, D.C. 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003.

A party must provide ten copies of its submission, which must be received at USTR no later than March 24, 1997. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–4936 Filed 2–26–97; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before March 5, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–9–9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28813.

Petitioner: Keith Campbell.

Sections of the FAR Affected: 14 CFR 119.67(a)(1).

Description of Relief Sought: To permit the petitioner to serve as Director of Operations of Reeve Aleutian Airways even though he does not hold an airline transport pilot certificate.

Docket No.: 28816.

Petitioner: Grant Murray.

Sections of the FAR Affected: 14 CFR 119.67(a)(1) and 119.71(a).

Description of Relief Sought: To permit the petitioner to continue to serve as Director of Operations for Eagle Jet Charter, Inc. without holding an airline transport pilot certificate.

[FR Doc. 97–4847 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on March 12 at noon.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Third floor, 1200 19th St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held March 12, 1997, at noon, at the Regional Airlines Association. The agenda for this meeting will include progress reports from The Air Carrier Pilot Pay for Training Working Group and the Air Carrier Minimum Flight Time Requirements Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listing device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 19, 1997.

Thomas Toula,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–4848 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Joint Special Committee 190/Eurocae Working Group 52; DO–178 Software Consideration

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 190/EUROCAE Working Group (WG) 52 meeting to be held March 11–13, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Washington, D.C. 20036.

The agenda will include the following: (1) Chairman's Opening Remarks and General Introductions; (2) Review and Approval of Agenda; (3) Establish Structure and Organization of the Committee; (4) Review Proposed Terms of Reference, RTCA Paper No. 039–97/SC190–002; (5) Identify Goals, Develop Work Program, and Determine Milestones; (6) Assign Tasks; (7) Other Business; (8) Date and Place of Next Meeting.

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, N.W., Suite 1020, Washington, D.C. 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 February 20, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–4849 Filed 2–26–97; 8:45 am]

BILLING CODE 4810–13–M

[Application #97–02–C–00–FCA]

Notice of Intent to Rule on Application, Passenger Facility Charge (PFC) Glacier Park International Airport; Submitted by the Flathead Municipal Airport Authority, Kalispell, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Glacier Park International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT, 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Monte M.

Eliason, Airport Manager, at the following address: Flathead Municipal Airport Authority, 4170 Highway 2 East, Kalispell, Montana 59901.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Glacier Park International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, Suite 2; 2725 Skyway Drive; Helena, MT 59601. 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 (#97–02–C–00–FCA) to impose and use PFC revenue at Glacier Park International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Flathead Municipal Airport Authority, Glacier Park International Airport, Kalispell, Montana, 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 May 3, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed Charge effective date: June 1, 1997.

Proposed charge expiration date: December 31, 2017.

Total requested for use approval: $8,249,680.00.

Brief description of proposed project: Terminal area expansion—Building construction; Terminal area expansion—Site work and road work.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Glacier Park International Airport.

Issued in Renton, Washington on February 19, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–4850 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Safety Bulletin

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety bulletin.

SUMMARY: The FRA is issuing Safety Bulletin 97–2 addressing a recommended safety practice to stop trains on heavy descending grades of 2 percent or greater by initiating an emergency application of the train's air brakes whenever the train speed exceeds the maximum authorized speed by five miles per hour or more.

FOR FURTHER INFORMATION CONTACT: Doug Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3346).

SUPPLEMENTARY INFORMATION:

Background

Preliminary investigatory findings following the January 12, 1997, derailment of a run-away Union Pacific Railroad Company (UP) freight train on a 2.2 percent descending grade at Hayden, California, indicate that when the train reached a speed of 11 miles per hour above its maximum authorized speed, the engineer initiated an emergency application of the train's air brakes. Following the emergency brake application, the train continued to accelerate out of control and derailed at the entrance switch to a controlled siding.

FRA has studied this accident and compared it with another run-away freight train derailment that occurred on the Cajon Subdivision of the Burlington Northern Santa Fe Railway (BNSF) four miles west of Summit, California, on February 1, 1996. Following that derailment, the BNSF implemented a ''five mile per hour rule.'' The railroad's rule requires that if a freight train exceeds the maximum authorized speed by five miles per hour while descending the grade on the Cajon Pass between Summit and Baseline, the train must be stopped by using an emergency application of the train's air brake system. The UP initiated a similar rule at 24 locations on their system following the January 12, 1997, Hayden, California, derailment.

While FRA does not approve of train operations at any speed above the maximum allowable speed established by Federal regulations or by railroad rule, FRA does support the initiatives taken by both the BNSF and UP to address the situation described here. FRA continues to believe that properly maintained equipment and proper instruction on train handling techniques, that adequately cover normal and emergency operating procedures on heavy grades, would prevent nearly all situations in which a train would be exceeding the allowable speed. However, if a simple, easy to implement practice could help prevent run-away trains, whatever the cause of the excessive train speed, that practice should be encouraged.

The suggested practice provides an additional measure of safety since it reduces the uncertainty inherent in ''judgement calls'' as to when to initiate emergency action when descending a heavy grade. The recommendation, based on UP's and BNSF's ''five mile per hour rule'' reduces the possibility that train speed will increase to a point where escalating energy levels prohibit stopping the train's momentum even with the retarding force generated by an emergency train brake application.

Recommendation

In recognition of the difficulty or impossibility of stopping a train on a heavy grade once a critical train speed is attained, FRA strongly recommends that railroads take the following safety precautions:

1. On descending grades of 2 percent or more, a train must be stopped, using an emergency application of the train's air brakes, if the train's speed reaches 5 miles per hour more than the train's maximum authorized speed.

2. After the train has stopped:

a. a sufficient number of hand brakes must be applied to secure the train;

b. once secured, the train must be inspected and no further train movement will be made until authorized by a designated railroad employee.

3. The railroad must conduct an immediate investigation into the cause of the incident and initiate appropriate corrective action.

4. Event recorder data must be routinely inspected to ensure full understanding and compliance with this rule.

Issued in Washington, D.C. on February 24, 1997.

Bruce M. Fine,

Associate Administrator for Safety.

[FR Doc. 97–4939 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket No. M–029]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Chief, Division of Statistical Analysis, Office of Statistical and Economic Analysis, Maritime Administration, MAR–451, Room 8107, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2277 or fax 202–366–8886. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: EUSC/Parent Company.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0511.

Form Number: None.

Expiration Date of Approval: April 30, 1997.

Summary of Collection of Information: The collection consists of an inventory of information regarding Foreign register vessels owned by Americans. Specifically, this information consists of responses from vessel owners verifying or correcting vessel ownership, data and characteristics found in commercial publications.

Need and Use of the Information: The verification of information on vessels that could be vital in a national or international emergency is essential to the logistical support planning by MARAD's Office of National Security Plans and the Logistics Plans Division of the Office of the Chief of Naval Operations. The information will be used for contingency planning for sealift requirements primarily as a source of ships to move essential oil and bulk cargoes in support of the national economy.

Description of Respondents: Foreign register American vessel owners which complete the information collection and return it to the Maritime Administration.

Annual Responses: 92.

Annual Burden: 46 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, SW., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: February 20, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–4851 Filed 2–26–97; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board

[STB Finance Docket No. 33360]

Southern Pacific Transportation Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SP) over trackage known as the Port of Brownsville Lead Track, extending from the SP connection at milepost 3.21 to milepost 9.36, and over trackage from milepost 7.60 to milepost 7.90 at the connection to the Port of Brownsville trackage, a total distance of approximately 6.45 miles near Brownsville, TX. The trackage rights will result in improved and more efficient train operations and will eliminate rail traffic congestion in downtown Brownsville.

The transaction was scheduled to be consummated on or after February 14, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33360, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: February 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4869 Filed 2–26–97; 8:45 am]

BILLING CODE 4915–00–P

HOUSE OF REPRESENTATIVES

Designation of Agent To Receive Child Support and Alimony Orders and Process Pursuant to Sec. 362 of Pub. L. 104–193

AGENCY: U.S. House of Representatives.

ACTION: Notice: Designation of Agent.

SUMMARY: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, Sec. 362), the United States House of Representatives designates the Office of General Counsel for the House to receive orders and accept service of process in matters relating to child support or alimony.

ADDRESSES: Such orders and process shall be directed to: Office of General Counsel, U.S. House of Representatives, 219 Cannon Building, Washington, DC 20515, (202) 225–9700.

Authority: 42 U.S.C. § 659, as amended by Sec. 362, Pub. L. 104–193, 110 Stat. 2105.

Dated: February 21, 1997.

Robin H. Carle,

Clerk, U.S. House of Representatives.

[FR Doc. 97–4820 Filed 2–26–97; 8:45 am]

BILLING CODE 0000–00–0

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

UNITED STATES INFORMATION AGENCY

Training Programs for Czech Republic, Romania, Slovakia, and Bulgaria

ACTION: Notice; Request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs for the Czech Republic, Romania, Slovakia, and Bulgaria.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–97–27.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, April 11, 1997. Faxed documents will not be accepted, nor will documents postmarked April 11, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Program activities should begin after June 15, 1997.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchange, E/PE, Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4350, e-mail address: {cminer@usia.gov} to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION BY FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–97–27, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION: Diminished resources have forced USIA to limit the scope of this announcement; regrettably, proposals for countries and themes other than the ones described below will not be eligible for consideration. USIA is interested in proposals in the following areas and countries:

Czech Republic: Projects that will strengthen civic culture by focusing on the training of NGOs to work with national and local governments as well as with local communities to propose and implement solutions to environmental problems.

Romania: Projects should focus on court management procedures which need to be modernized and rationalized in order to meet modern democratic standards and the complex array of market economy-related issues. The activities should focus on information dissemination, training court personnel and upgrading court procedures.

Slovakia: Projects should focus on the free-flow of information for Slovak libraries. Objectives of the project would be to introduce practical use of new technologies and new library services for citizens. There is particular interest in assisting the parliamentary library to become a source of information about the parliament and lawmaking for the whole country and not just a research service for its members. In addition, Slovak partners should include the librarian's association and leading university and public libraries, particularly Bratislava's University Library.

Bulgaria: Proposals should focus on the management of media as a business: station management, newsroom management, advertising, marketing, personnel, and public relations.

Exchange and training programs supported by institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organizations and a host-country institution; a proven track record of conducting program activity; cost sharing from American or in-country

sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Note: Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted in response to this RFP.

Guidelines

1. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Note that participants should be professionals and not members of university faculties. In the selection of all foreign participants, USIA and USIS post retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

2. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. Letters of commitment from the hosts of study tour site visits should also be included, iff applicable.

3. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

Proposal Budget

Please refer to the Solicitation Package for complete budget instructions.

Applicants must submit a detailed line item budget based on specific instructions in the Program and Budget Guidelines of the Proposal Submission Instructions. Proposals for less than $117,000 will receive preference. Proposals with strong cost-sharing will be given priority.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not flat rate.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels for USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA posts overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should respond to the program requirements of the RFP.

2. *Program planning and ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Goals should be reasonable and attainable. A detailed agenda and relevant work plan should demonstrate how objectives will be achieved. A timetable indicating when major program tasks will be undertaken should be provided. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-up activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. *Project Evaluation:* Proposals should include a plan and methodology to evaluate the project's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries, honoraria, and subcontracts for services, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4845 Filed 2–26–97; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute for EFL Educators From Francophone and Lusophone Sub-Saharan Africa

ACTION: Notice; Request for Proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, Africa Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a Summer Institute for English-as-a-Foreign-Language (EFL) Educators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week academic training/development program in English-as-a-Foreign-Language for 16 teacher trainers/educators and supervisors/inspectors of secondary schools selected from sixteen French and Portuguese-speaking countries of Sub-Saharan Africa.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEA–97–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, April 3, 1997. Faxed documents will not be accepted, nor will documents postmarked April 3, 1997, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

The Summer Institute for EFL Educators should be programmed to encompass about 45 days and should begin between June 15, 1997, and July 13, 1997, depending on the host institution's academic calendar. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, Africa Branch (E/AEA), Ann J. Martin, Program Officer, Room 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: 202– 619–5371, fax: 202–619–6137, or e-mail: amartin@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read the information provided before downloading.

TO RECEIVE A SOLICITATION PACKAGE BY FAX: The entire solicitation package may be requested via the Bureau's Grants Information ''Fax on Demand'' System which is accessed by calling 202/401–7616. The 'Table of Contents' containing document order numbers should be the first document requested.

Please specify USIA Program Officer Ann J. Martin on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEA–97–02, Office of Grants Management, E/XE,

Room 326, 301 4th Street, SW., Washington, DC 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Program Overview

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) solicits proposals for a Summer Institute for English-as-a-Foreign-Language (EFL) Educators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week academic training/development program in English-as-a-Foreign-Language, incorporating a U.S. cultural and educational experience, for 16 teacher trainers/educators and supervisors/inspectors of secondary schools selected from sixteen French and Portuguese-speaking countries of Sub-Saharan Africa. Subject to availability of funds, one grant will be awarded to conduct the 1997 Institute.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-foreign-language, special expertise in handling cross-cultural programs, and experience with educational systems in Sub-Saharan Africa and African educators.

Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The general objective in the Institute is to support and encourage the upgrading of the teaching of English at secondary school level in French and Portuguese-speaking African countries. The specific objectives of the 1997 Institute are to develop skills of training, supervising, and evaluating teachers of EFL; to explore ways to introduce and/or adapt current EFL teaching methods and materials to local conditions in African countries, and to foster leadership capabilities.

Guidelines

The proposal should be designed to support the following specific activities:

(a) A five-week academic program with emphasis on developing the capacities of teacher trainers/educators and supervisors/inspectors to train, supervise, and evaluate teachers of EFL; to introduce and/or adapt current EFL teaching methods and materials to local conditions in African countries; and to assume leadership roles in their national EFL education systems. Detailed academic objectives are set forth in the Solicitation Package.

(b) Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of African countries, planned with the five-week academic program.

(c) A one-week, escorted, cultural and educational tour of Washington, D.C., complementing and reinforcing the academic material.

(d) Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

(e) Assistance to participants to select, purchase and ship EFL materials, to use in follow-on activities and training projects in their home countries.

Participants will be selected by USIA, based on nominations from USIA offices overseas. Minimum qualifications for all participants will be the equivalent of BA/BS degrees from their national education systems. Participants will enter the United States on J-visas, using IAP–66 forms issued by USIA offices in the home country.

The U.S. institution should plan to conduct an initial needs assessment of participants and should be prepared to adjust program emphasis as necessary to respond to participants' concerns for EFL education. Specific areas to address in the five-week academic program follow:

1. New/current EFL teaching methodologies and approaches (theory and practice).
2. Comprehensive coverage of classroom pedagogical issues and classroom management skills (including special focus on large classes).
3. Teacher observation and evaluation practices.
4. Designing and conducting in-service training programs and workshops for teachers.
5. Leadership training.
6. The introduction and/or adaptation of existing EFL materials to local conditions in African countries and general materials development procedures.
7. Development of local/regional professional EFL associations.
8. Introduction to Internet (WWW and e-mail) for professional networking and development.

Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution community and an introduction to U.S. society and system of education should be considered an integral part of the Institute.

Management of the academic program, the cultural tour and on-site arrangements will be the responsibility of the Institute grantee. The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. USIA will arrange participants' international travel. USIA will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The cost to USIA for the Summer Institute for EFL Educators from Francophone and Lusophone Africa should not exceed $95,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants.

2. Program planning: Relevant work plan and detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above.

3. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic EFL program and effective cross-cultural communication with African participants. Proposals should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. Multiplier effect/impact: Proposed program should contribute to long-term, mutual understanding and sharing of information about Africa among Americans, as well as to the understanding and knowledge of the U.S. among the African participants.

5. Support of diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host community who interact with participants.

6. Ability to achieve program objectives: Teaching objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

7. Institution's record/ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project evaluation: Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 24, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4846 Filed 2–26–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Availability of Annual Report

Under Section 10(b) and Section 13 of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Veterans' Advisory Committee on Rehabilitation Annual report for Fiscal Year 1995 has been issued.

The report summarizes activities of the Group relative to VA's rehabilitation program. It is available for inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Vocational Rehabilitation and Counseling Service (28), 1800 G St. N.W., Room 501, Washington, DC 20420

Dated February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4827 Filed 2–26–97; 8:45 am]

BILLING CODE 8320–01–M

VA Innovations in Nursing Advisory Committee; Notice of Meeting

As required by section 10(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs (VA) hereby gives notice that the second meeting of the VA Innovations in Nursing Advisory Committee will be held March 3–4, 1997, in Room C7 at VA Headquarters, 810 Vermont Avenue, NW, Washington, DC. The March 3, 1997, session will convene at 9:00 a.m. and adjourn at 4:30 p.m. The March 4, 1997, session will convene at 8:00 a.m. and adjourn at 3:00 p.m.

The purpose of the committee is to study and formulate recommendations to the Under Secretary for Health on how VA can generally promote and support health care innovations in which nurses play key leadership and clinical roles and which promote VHA's reengineering efforts.

On March 3, the Committee will explore issues that impact on innovations in nursing. On March 4, the Committee will realign strategies to identify existing and potential innovations in nursing as well as barriers which impede innovations.

The meeting is open to the public. Public comment may be offered from 3:00 p.m. until 3:30 p.m. on March 3, 1997. Those who plan to attend or who have questions concerning the meeting should contact the Designated Federal Official for the Committee, Charlotte F. Beason, Ed.D., RN, at (202) 273–8422.

Dated: February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4825 Filed 2–26–97; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., Section 3121, will be held on March 11, 12, and 13, 1997, in Washington, DC. The committee will meet from 9 a.m. to 4:30 p.m. on March 11 and 12, and from 9 a.m. to 12 noon on March 13, 1997. The meeting will take place at the Department of Veterans Affairs Central Office, Room 230, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary.

On Tuesday, the Committee will discuss the progress of the reengineering plan for VA's Vocational Rehabilitation and Counseling Program. On Wednesday, the Committee will hold a joint meeting with the Committee on Prosthetics and Special Disabilities Programs. On Friday, the Committee will hold a planning session and discuss future projects of the Committee.

The meeting is open to the public. Those wishing to attend should contact Theresa Boyd at 202–273–7412 prior to March 7, 1997.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3:30 p.m. on March 12, 1997.

Dated: February 19, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4826 Filed 2–26–97; 8:45 am]

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February 27, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 330, and 358

Over-the-Counter Human Drugs; Proposed Labeling Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, and 358

[Docket Nos. 96N–0420, 92N–454A, 90P–0201, and 95N–0259]

RIN 0910–AA79

Over-The-Counter Human Drugs; Proposed Labeling Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a standardized format for the labeling of over-the-counter (OTC) drug products. FDA has determined that because the design and format of labeling information varies considerably among OTC drug products, consumers often have difficulty reading and understanding the information presented on OTC drug product labeling. The proposal is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products. This document supersedes the agency's proposed rule regarding the use of interchangeable terms, published in the Federal Register of March 4, 1996 (hereinafter referred to as the March 1996 proposal), and responds to the comments that were submitted to FDA as a result of that proposal (Docket No. 92N–454A). Accordingly, this document formally withdraws the March 1996 proposal. Finally, this proposal would preempt State and local rules that establish different or additional format or content requirements.

DATES: Submit written comments by June 27, 1997. Submit written comments on the information collection requirements by March 31, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Diana M. Hernandez, Center for Drug Evaluation and Research, Division of OTC Drug Products (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Federal Food, Drug, and Cosmetic Act (the act), OTC drug products must be safe and effective in order to be marketed. The agency is conducting a comprehensive review of these drug products, which are available to consumers without a prescription. As a result of this review, the agency has required specific language to be included in the labeling of many OTC drug products, describing the uses, directions, warnings, drug interaction precautions, active ingredients, and other information, so that consumers can use these products safely and effectively.

As a result of escalating health care costs and the increasing availability of OTC drug products, some of which were once available only by prescription, more consumers are engaging in self-medication. Thus, it is increasingly important that consumers read and understand the information on drug product labeling.

On January 6, 1993, the agency issued final regulations to help consumers read and understand the information on food product labeling (58 FR 2079). The new regulations, which provide for a standardized graphic presentation for food nutrients, were issued in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535, November 8, 1990). The 1990 amendments directed the Secretary of Health and Human Services to issue implementing regulations to:

> * * * require the required information to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet.

(Section 2(b)(1)(A) of the 1990 amendments)

This new, standardized format allows the consumer to judge the significance of the level of a particular nutrient in a particular food in the context of the total daily diet.

FDA believes it is equally important for consumers to be able to make reasoned decisions about the drugs they take. On August 24, 1995 (60 FR 44182), FDA proposed a comprehensive program to increase the distribution and quality of easy to read and easy to understand written information about prescription drugs to patients. Recently enacted legislation provides that various private entities will work to transform these goals into a satisfactory program. FDA is now proposing to improve the way that information on the labeling of OTC drug products is communicated.

The design, format, and placement of required labeling information varies considerably among OTC drug products. As a result, consumers often have difficulty finding, reading, and understanding this labeling information. Modifying and simplifying the manner in which the information is presented can improve the legibility and understandability of OTC drug product labeling. FDA is, therefore, proposing to establish a standardized format for the labeling of all marketed OTC drug products. This action is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products.

The agency is proposing five types of labeling changes for OTC drug products. First, the proposal would require that OTC drug product labeling include standardized headings and subheadings presented in a standardized order, as well as standardized graphical features such as the Helvetica type style, minimum standards for type size, leading (i.e., space between two lines of text), kerning (spacing between letters), upper and lower case letters, and graphical highlights.

Second, the proposal would permit manufacturers, packers, or distributors to delete specific terms, referred to for purposes of this rulemaking as ''connecting terms,'' that are currently required in OTC drug product labeling. Holders of approved new drug applications (NDA's), antibiotic drug applications, and abbreviated new drug and antibiotic drug applications (referred to collectively in this document as ''marketing applications'') who wish to delete a ''connecting term'' in their labeling would also be permitted to delete the ''connecting term'' in accordance with 21 CFR 314.70. Typically, such terms are found within quotation marks in OTC drug monographs and in specific regulations. Deletion of these terms would only be permitted where deletion would not change the meaning of the information. Deletion of these terms would not be required but, rather, would be permitted as needed to simplify the presentation of labeling information (which is usually presented in a lengthy paragraph format), so that manufacturers, packers, distributors, or applicants can comply with the proposed, easier to read format.

Third, the proposal would expand the list of ''interchangeable terms'' found in the current regulations (§ 330.1(i) (21 CFR 330.1(i))), to facilitate the use of more concise, easier to understand

statements on the labeling of OTC drug products. Expanding the list of interchangeable terms would provide manufacturers, packers, distributors, or applicants with a broader choice of terms for a particular statement on the labeling. This proposed rule addresses the same interchangeable terms (as well as additional interchangeable terms) that were proposed on March 4, 1996 (61 FR 8450). Thus, this proposal formally withdraws the March 1996 proposal.

Fourth, the proposal would amend specific warning language required under current monographs and regulations (the pregnancy-nursing warning, the ''keep out of reach of children'' warning, and the overdose/accidental ingestion warning (§§ 201.63, 201.314(a) and (g)(1) (21 CFR 201.63, 201.314(a) and (g)(1)), and 330.1(g)) to make the warnings easier to understand and more concise.

Finally, in order to ensure that OTC drug product labeling is easier to read and understand, and to ensure the safe and effective use of OTC drug products, FDA is proposing to preempt State and local rules that establish different or additional format or content requirements than those in this proposed rule. The agency believes that such State and local requirements for OTC drug labeling would undermine the agency's objectives of ensuring the safe and effective use of OTC drug products through the use of a uniform easy-to-read format for all OTC drug product labeling.

II. Regulatory Scheme for OTC Drug Product Labeling

A. Current Statutory and Regulatory Requirements

The act and FDA's implementing regulations require specific information on the labeling of all OTC drug products. FDA regulations, including OTC drug monograph regulations, require information on the labeling of OTC drug products by product type (e.g., antacid, bronchodilator). Additionally, manufacturers, distributors, and packers may place the information required under OTC drug monographs in any format and order, as long as the information complies with the appropriate monograph and other applicable regulations. OTC drug products marketed under a marketing application must be labeled in accordance with the labeling approved in the application. As a result, the format of required labeling information varies considerably among OTC drug products.

Under section 502 of the act (21 U.S.C. 352), a drug is misbranded if the labeling does not contain: The name and place of business of the manufacturer, packer, or distributor and a statement of the quantity of contents in terms of weight, measure, or numerical count (section 502(b)); the established name, if any, of the drug, and the established name of each active ingredient if the drug is fabricated from two or more ingredients (section 502(e)); and adequate directions for use and adequate warnings against unsafe use (section 502(f)). In addition, a drug is misbranded if its labeling is false or misleading in any particular (section 502(a)), or if it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling (section 502(j)).

The act also addresses the prominence and conspicuousness of drug product labeling. Section 502 of the act states that:

> A drug * * * shall be deemed to be misbranded—
>
> * * * * * * *
>
> (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

FDA has implemented the general labeling requirements under section 502 of the act in part 201 of the regulations (21 CFR part 201). Section 201.1 sets forth requirements with respect to the name and place of business of the manufacturer, packer, or distributor. Section 201.5 defines adequate directions for use as ''directions under which the layman can use a drug safely and for the purposes for which it is intended.'' Adequate directions include a statement of all the manufacturer's intended uses of the drug (frequently termed ''Indications''), quantity of dose, route or method of administration, and the frequency, duration, and timing of administration (§ 201.5). Section 201.10 sets forth requirements for ingredient information required by section 502(e) of the act.

Section 201.17 sets forth requirements concerning the location of expiration dating, which is required under the current good manufacturing practice (CGMP) regulations (§ 211.137 (21 CFR 211.137)). Section 201.18 requires a lot number ''capable of yielding the complete manufacturing history of the package.'' A related CGMP regulation (§ 211.132 (21 CFR 211.132)) that applies to most OTC drug products requires a labeling statement alerting consumers to certain tamper-resistant packaging features (§ 211.132(c)).

Sections 201.60 through 201.62 define and set forth requirements for the principal display panel of OTC drug product labeling. The principal display panel is defined as the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale. The information required to be on the principal display panel includes a statement of identity of the drug and the net quantity of contents of a drug. The statement of identity must include the established name of the drug, as well as the pharmacological category or principal intended action of the drug. If the drug is a mixture and has no established name, its general pharmacological actions or its principal intended actions must be stated (§ 201.61(b)). Under § 330.1(c)(1) (21 CFR 330.1(c)(1)), the statement of identity of a drug covered by an OTC drug monograph shall be the term or phrase used in the applicable monograph.

Under section 502(e)(3) of the act, the established name of a drug is generally derived from its official title in an official compendium. When the established name for a single or a multiple ingredient drug product is stated in terms of the active ingredient(s), the active ingredient(s) will appear on the principal display panel. However, when a multiple ingredient product does not have an established name, the active ingredients are not required to be placed on the principal display panel (§ 201.61(b)), but may be prominently placed on the back or side panel in accordance with section 502(e) of the act and §§ 201.10 and 201.15. Under § 330.1(j), the agency recommends that the labeling of a product contain the quantitative amount of each active ingredient, expressed in terms of the dosage unit stated in the directions for use (e.g., tablet, teaspoonful).

Current regulations also address the format of OTC drug product labeling, but do not require a specific print size or print style. For example, implementing regulations in § 201.15 describe a number of situations in which the agency considers information on a drug product's label as lacking the prominence and conspicuousness required by section 502(c) of the act. For example, a statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason of, among others, ''[s]mallness or style of type in which such word,

statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter'' (§ 201.15(a)(6)).

Section 201.61(c) requires that the statement of identity of an OTC drug product shall be in boldface type on the principal display panel, in a size reasonably related to the most prominent printed matter on such panel, and in lines generally parallel to the base on which the package rests as it is designed to be displayed. In some instances, the agency has required that warnings for certain OTC bronchodilator drug products shall appear in boldface type (§ 341.76(c)(6)(i) and (c)(6)(ii) (21 CFR 341.76(c)(6)(i) and (c)(6)(ii))).

In the Federal Register of March 13, 1995 (60 FR 13590), the agency issued final regulations (part 328 (21 CFR part 328)) that require the principal display panel of all alcohol-containing OTC drug products intended for oral ingestion to state the percentage of alcohol present in a product. Section 328.50(d) specifies that this information must appear in a size ''reasonably related to the most prominent printed matter on the panel or label on which it appears * * *.'' This requirement is based on the agency's belief that consumers, especially those who wish to avoid or limit alcohol ingestion, need to be able to readily determine the alcohol content of OTC drug products at the time of purchase (60 FR 13590 at 13592).

Section 330.1(g) currently requires that the labeling of all OTC drugs contain the warning: ''Keep this and all drugs out of the reach of children'' and requires that drugs contain specific language outlining procedures to follow in case of accidental overdose for drugs administered orally, and in case of accidental ingestion for drugs administered topically or rectally. Sections 201.63 and 330.2 (21 CFR 330.2) require a warning for persons who are pregnant, or are breast feeding a baby, on the labeling of all OTC drugs intended for systemic absorption.

In addition to the warnings required under OTC drug monographs, the agency has specific warning requirements for certain ingredients in OTC drug products. Some examples are the Reye's syndrome warning for OTC aspirin and aspirin-containing drug products in § 201.314(h) and the warnings for water-soluble gums and related ingredients in § 201.319. These regulations mandate specifically worded warning statements for drugs containing sodium, mineral oil, wintergreen oil, ipecac syrup, acetophenetidin, salicylates, OTC drugs intended for minor sore throats, and guar gum, and address safety concerns associated with these ingredients and conditions. (See, e.g., §§ 201.64, 201.302, 201.303, 201.308, 201.309, 201.314, 201.315, and 201.319.) For example, § 201.315 requires in certain circumstances the following warning for OTC products intended for the temporary relief of minor sore throats:

''Warning—Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by physician.''

The agency has issued other warnings and caution statements for certain ingredients in OTC drugs in part 369 (21 CFR part 369) as ''interpretative statements.'' These warnings and cautions are ''suggested,'' because manufacturers are not required to use the specific text of the warnings on their products. These warnings are based on safety considerations associated with the ingredients to which they apply. Products that do not contain a similar warning to those suggested in part 369 are deemed to be misbranded under section 502(f) of the act.

The important warning information, as well as the other required or recommended labeling information, does not appear in the same location, in the same sequence, or in the same print size in the labeling of OTC drug products. The agency has determined that consumers would be able to use OTC drug products more effectively if this information appeared with sufficient prominence (at or above a specified minimum print size) and in a uniform location in the labeling of all OTC drug products. Such labeling uniformity is a major goal of this proposal.

B. Requirements for Labeling of Drugs Covered by an OTC Monograph

In addition to being subject to the general and specific labeling requirements, OTC drugs marketed under a final OTC drug monograph are subject to specific labeling requirements contained in the monograph. The general criteria for establishing adequate labeling for OTC drugs under a monograph are set forth in § 330.10(a)(4)(v) (21 CFR 330.10(a)(4)(v)). Under these criteria, labeling of OTC drugs must be clear and truthful, not misleading, and must state the intended uses, warnings, side effects, and adverse reactions associated with a product in ''such terms as to render them likely to be read and understood by the ordinary individual, including individuals of a low reading comprehension level, under customary conditions of purchase and use.''

The labeling requirements established in OTC drug monographs cover various categories of drug information, including the statement of identity, indications, directions, warnings, and drug interaction precautions. However, the specific information required to appear under these categories varies according to the therapeutic class, active ingredients covered by the monograph, and safety concerns. In addition, the labeling information is not required to appear in the same location, in the same sequence, or in the same print size. Thus, the format varies among drug products covered by the same OTC drug monographs. This proposal is intended to provide a uniform format so that consumers will be able to use OTC drug products more safely and effectively.

In the Federal Register of May 1, 1986 (51 FR 16258), FDA amended its policy (known as the exclusivity policy) for the labeling of OTC drug products (§ 330.1(c)) to allow the use of alternate, industry provided terminology in the ''indications'' section of OTC drug product labeling. The rule established three alternatives for stating the indications for use in OTC drug product labeling. The label and labeling of OTC drug products are required to contain, in a prominent and conspicuous location, either: (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated ''APPROVED USES;'' (2) other wording describing such indications for use that is truthful and not misleading, which shall neither appear within a boxed area nor be designated ''APPROVED USES;'' or (3) the approved monograph language on indications, which may appear within a boxed area designated ''APPROVED USES,'' plus alternative language describing indications for use that is truthful and not misleading, which shall appear elsewhere in the labeling. The rule states that all required OTC drug labeling other than indications for use (e.g., statement of identity, and warnings) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or by regulation (§ 330.1(c)(vi)).

C. Requirements for Labeling of Drugs Not Marketed Under an OTC Drug Monograph or a Marketing Application

Some OTC drug products are not currently marketed under an approved

marketing application or a final OTC drug monograph. Many of these OTC drug products will become the subject of final monographs and, as discussed in section VI. of this document, they will then be subject to the labeling and format requirements in this proposed rule. Other products in this category that are, or become, the subject of pending marketing applications, would be required to submit labeling with their application in compliance with this rule.

III. The Need for Improved Labeling Design for OTC Drug Products

The labeling requirements for OTC drug products set forth specific wording for the information presented (e.g., directions for use, warnings, etc.) to consumers to ensure the safe and effective use of OTC drug products. FDA has examined representative examples of currently marketed OTC drug product labeling and has found that the design and format of labeling information varies considerably among these products. The agency has determined that consumers would have less difficulty reading and understanding the information if the labeling included uniform headings and subheadings presented in a standardized order, utilizing a minimum type size and other graphical features, and if certain required information could be made more concise.

While some manufacturers of OTC drug products have taken significant steps to improve the presentation of information on OTC drug product labeling, many of these products still have labeling that is difficult to read. In addition, consumers often have difficulty comparing the labeling on different products and deciding which product to purchase, because the information is not presented in the same format.

The agency has determined that a standardized format for OTC drug product labeling would improve legibility and understandability and enable consumers to become more familiar with the type and location of specific important labeling information, thus increasing consumer knowledge about the safe and effective use of OTC drug products. A standardized format would also improve the ability of consumers to compare products, thereby helping consumers select the appropriate product to meet their needs.

In reaching this determination, the agency has considered the increased use of OTC drug products in the marketplace and the changing patterns of use of these products by consumers. The agency also has considered comments that it has received from consumers expressing their concerns with the legibility and understandability of OTC drug product labeling. Additionally, the agency has reviewed literature studies that confirm consumers' concerns with current OTC drug product labeling. These studies recommend ways to improve legibility and understandability, discuss the importance of adherence to the ''directions for use'' and ''warnings'' sections of the labeling, and report on preventable adverse drug reactions from OTC drug products.

In the August 16, 1995 (60 FR 42578), Federal Register notice the agency sought comment on to what extent OTC drug labeling influences consumer judgements and behavior. No data or comments were submitted in response to this request. The agency also conducted a review of the literature on this issue. Although there is voluminous literature on the effects of labels on a variety of consumer products, there is little information about the influence of label variations regarding OTC drug products. Because the agency believes that this information is important and relevant to this proposed rule, the agency again seeks comment or submission of data or research relating to OTC drug labeling and its influence on consumer behavior and comprehension of label information.

During the comment period the agency intends to conduct research on the revised format compared to existing labeling. This research will focus on consumer reading and comprehension of the information from the revised format, compared to existing labeling. It will also examine consumers' reading of OTC drug labels under a variety of conditions for a variety of consumers (e.g., at various literacy levels). It will also examine the impact of new OTC label designs on comprehension of the intended messages. The research will also explore consumer judgments about OTC drug products for the intended population. Additionally, the agency intends to collect data relevant to overall judgments of the relative value of revisions in the OTC drug labeling format. The agency intends to seek public comment on the results relevant to the development of standardized format and content requirements prior to finalizing these provisions. After this rule becomes final, the agency intends to examine the consumer behavioral effects and the public health impact of imposed OTC drug labeling.

A. Changing Patterns of OTC Drug Use

OTC drug products are readily available and may be used without medical supervision. In recent years, more potent drugs have been switched from prescription to OTC status (e.g., cimetidine, naproxen sodium, ketoprofen, nicotine polacrilex, nicotine transdermal system, and minoxidil topical) and new uses have been approved for certain OTC drugs (e.g., acid reducer claims for several drug products, and hair growth claims for topical minoxidil). This trend of switching from prescription to OTC status is expected to increase in the future as the safety profile of many drug products becomes more established. Additionally, consumers are becoming more actively involved in their own health care. As a result, consumers are more likely to practice self-diagnosis and self-medication with OTC drug products. Thus, it is increasingly important that OTC drug product labeling provide consumers with uniform and understandable information for the safe and effective use of these products.

One important factor contributing to the increased use of OTC drug products has been rising health care costs. Hospital charges, physician fees, and the costs of prescription medications and other health-related products and services are higher and have risen faster than the associated costs of self-medication with OTC drug products. Today, four times as many health problems are treated by consumers with OTC drug products instead of seeing a physician, and 60 to 95 percent of all illnesses are initially treated with some form of self-care, including self-medication with OTC drug products (Ref. 1). Although 60 percent of the medications purchased by consumers in the United States are OTC, these purchases account for less than 2 percent of the U.S. health-care dollar, making it likely that, as a low-cost alternative, OTC drug use will continue to grow (Ref. 1).

Another significant factor contributing to the increased use of all drugs, including OTC drug products, is the advancing age of many consumers. The elderly comprise 12 to 17 percent of the population but consume about 30 percent of all medications (Ref. 1). The elderly are projected to consume as much as 50 percent of all medications by the year 2000 (Ref. 1).

B. Difficulties With Current Labeling

Although significant strides have been made in improving the legibility and understandability of OTC drug product labeling, there are still many products with labeling that is difficult to read. The agency has received numerous reports from consumers, health

professionals, patient advocacy organizations, literacy experts, and others stating their concerns about current OTC drug product labeling. Reports in the literature document similar concerns (Refs. 2 and 3).

Type size, letter and line spacing, contrast, print and background color, and type style are all factors that contribute to poor legibility of information (Refs. 3, 4, and 5). A recent study examined the effects of type size (vertical letter height) and horizontal letter compression on the legibility of OTC drug product labeling in persons 60 years of age and older (Ref. 3). The subjects were tested using three marketed OTC analgesics. The researchers found that a significant number of the elderly population could not adequately see the print on certain OTC product labels due in part to the small type sizes and high degree of horizontal compression (Ref. 3). Another study evaluated the visual acuity needed to read 25 marketed OTC drug product labels (Ref. 2) The authors found that the majority of labels required a visual acuity much greater than what is considered normal (Ref. 2). Another study found that 26.2 percent of the test subjects indicated difficulty reading print on product labels, even though over 90 percent of those tested reported always or sometimes reading the label (Ref. 6).

Visual acuity alone, however, is not the only consideration, because persons with normal vision report having trouble reading OTC drug product labeling (Ref. 3). Much of the informational text in OTC drug product labeling is specifically required by regulation and, on many products, the required text may be extensive. The information is often presented in a paragraph format that is unappealing to the eye and may cause the reader to lose interest.

In contrast, warnings in outline layout may have greater eye appeal, be easier to process, and be more effective than warnings in paragraph form (Ref. 7). An outline format may provide the reader with spatial cues as to the organization of the text and is likely to increase attention to the message (Ref. 7). Without the modifications presented in this proposed rule, it would be extremely difficult to organize labeling text to provide the spacial cues necessary to increase the appeal and visibility of the messages.

C. Problems With Adherence and Preventable Adverse Drug Reactions

OTC drug products are safe and effective when used as directed in the labeling. However, because of the changing patterns of OTC drug use, the potential for adverse drug reactions and misuse of OTC drug products is increasing. Although much of the data on the incidence of adverse drug reactions, including hospital or physician visits due to these reactions, does not distinguish between prescription and OTC drugs, inappropriate use of drug therapy generally is a major concern (Refs. 6, 8, and 9). Studies indicate that the elderly sometimes take OTC drug products for the wrong reasons (Ref. 10). This misuse has been attributed to the lack of information or misinformation from various sources (Refs. 3 and 11).

Additionally, the possibility of adverse drug interactions has increased because more new medications (as a result of prescription-to-OTC switches) are now available OTC and there are new OTC combination drug products for multiple symptoms. Consumers may not be aware that a particular prescription drug product that they are taking is in the same drug class as an OTC drug product that they are also taking. For example, a number of nonsteroidal anti-inflammatory drugs (NSAID) are marketed both as high-dose prescription anti-inflammatory arthritis treatments as well as lower dose OTC pain relievers/fever reducers. Patients who self-medicate with an OTC analgesic who are also taking a prescription NSAID place themselves at risk for NSAID-induced gastrointestinal problems (Ref. 12). Making OTC drug product labeling information easier to read and understand could ensure that patients become aware of this important information and avert potential problems.

D. FDA's Requests for Public Comment

During the past several years, many consumers have written to FDA to express concern about the legibility and understandability of OTC drug product labeling. Many individuals, especially the elderly, are concerned with small print size, print style, and lack of color contrast. Consumers stated that poor labeling legibility may cause them to select an improper dose, and, thus, may result in unsafe or ineffective use of the product. Consumers have also submitted comments to FDA about the print size of OTC drug product labeling in response to various OTC drug product rulemakings.

Additionally, the agency received a citizen petition requesting that FDA adopt regulatory standards for the size and style of print used for OTC drug product labeling. In response to consumer comments and the citizen petition, the agency published two requests for public comments in the Federal Register that related to the legibility and understandability of OTC drug product labeling. In addition, in an effort to solicit more information and views on specific aspects of OTC drug product labeling design that would improve communication to consumers, FDA held a public hearing on September 29, 1995. A discussion of the citizen petition, requests for comment, and the public hearing follows.

1. Citizen Petition and March 6, 1991, Request for Comments

Pharmacists Planning Service, Inc., petitioned FDA (Docket No. 90P–0201) to adopt regulatory standards for optimum size and style of print used for OTC drug product labeling. The petition stated that regulatory standards are needed to maximize readability of the print for persons with deteriorating vision, and because most people (especially the elderly) are unable to read the small print that currently appears on some OTC drug product labeling.

The petition requested that FDA adopt regulatory standards for the following reasons: (1) Medication misuse and abuse are serious and costly problems to patients, health providers, health care insurance plans, and Federal, State, and local governments; (2) prescription drugs continue to be switched to OTC status along with their attendant side effects and cautions on use; (3) OTC drugs are marketed in containers of all shapes and sizes, and the labeling bears instructions, cautions, and side effects associated with their use; and (4) most people, particularly the elderly, are unable to read the small print, which often includes vital information.

The petition also stated that:

> more than 240,000 older adults were hospitalized due to adverse drug reactions, mixing OTC drugs, which are available through sources other than a qualified health professional, and through lack of medical/pharmaceutical information on the proper method of administration of these medications.

The petition asserted that FDA regulatory standards could result in a $10 billion savings in hospital costs.

In response to this petition, and in an effort to determine what further steps needed to be taken, FDA published a notice to seek public comments on the feasibility of regulatory standards for the print size and style of OTC drug product labeling (hereinafter referred to as the March 1991 notice) (56 FR 9363, March 6, 1991). FDA also requested comments on whether any new labeling requirements would have a substantial economic impact on manufacturers.

FDA requested specific comments on the following issues:

(1) Are current print, sizes, types, colors, contrasts, and backgrounds of OTC drug product labeling adequate in providing readable information for individuals with normal eyesight and for those with poor or deteriorating eyesight?

(2) Should there be a mandatory minimum print size or other readability standard and, if so, what should it be? If the answer is yes, should this be established through a regulation or a guideline?

(3) Should a package insert or larger carton be mandatory if a minimum print size standard is implemented and, because of package size, the manufacturer is unable to meet the specifications?

(4) What impact would a Federal legibility/readability regulation have on State laws that relate to ''slack-fill?''

(5) What relevant data are available and what studies have been performed to determine optimum print size, background, and contrast for package products?

(6) What adverse effects have been documented that are associated with the inability or failure to read labels on OTC drug products?

(7) Will the Nonprescription Drug Manufacturers Association's (NDMA's) guidelines be effective and have a positive impact on labeling and, if so, are these guidelines adequate so that a Federal regulation or guideline is not needed?

FDA received 57 comments on the March 1991 notice (see Docket No. 90P–0201). About half of these comments were from consumers and favored larger or more readable print. Congressional representatives, professional organizations, manufacturers, health professionals, health departments, universities, a nursing home, a hospital, and a trade association expressed strong support for new FDA regulations. In contrast, a professional organization, a trade association, and several OTC drug product manufacturers preferred limited regulation or guidelines.

Some comments attached studies or documents on readability. One document discussed the loss of visual acuity with increased age, and concluded that size, color, and background of OTC product labeling are important. One study involving 36 students and 29 elderly subjects concluded that the results showed that labeling of small bottles need not be restricted to bottle surface area, but can be incorporated on wings and tags attached to the label.

One comment, which favored voluntary guidelines, included a number of suggestions concerning inserts, slack-fill laws, and larger packages. The comment submitted a publication that analyzed print size and style used in publications and listed 30 suggested guidelines for print, including type selection, size, line leading, proportional spacing, line width, columns, paragraphing, etc. The comment also submitted parts of a text that discussed legibility, color, surface, spatial arrangement, and position of printing.

NDMA, a trade group representing manufacturers of OTC drug products, agreed that efforts should be made to enhance labeling legibility, and submitted several references dealing with print size and style. NDMA stated that it had established a Special Task Force on Label Readability and had distributed guidelines to its membership as part of industry's voluntary program to enhance readability of OTC drug product labeling. NDMA also stated that it had held a briefing session for the entire industry, which was open to the public, to explain and help implement the guidelines.

NDMA stated that its guidelines provide for enhanced readability of OTC drug product labeling by addressing improvements in print size, type, style, colors, contrasts, and backgrounds. NDMA's guidelines, in 1991, recommended a minimum of 4.5 point type, where package size and copy requirements prohibit larger print. (These guidelines were revised in 1995, however, to recommended 6 point type, with 4.5 type as an absolute minimum in very small packages where space does not allow 6 point type.) NDMA claimed, however, that it is unreasonable to assume that all labeling can be made easily readable to all persons with poor or deteriorating eyesight.

NDMA also stated that there is a need for national uniformity in slack-fill laws because multiple State laws could be inconsistent or contradictory with each other and with Federal requirements for print size.

One comment submitted an investigative survey of consumers' ability to read OTC drug product labeling printed with the minimum type sizes recommended by NDMA's guidelines. According to the comment, the survey demonstrates that a significant proportion of the adult population over 20 years of age is not able to read OTC drug product labeling with 4.5 point minimum type size, and that only 48 percent of the public who currently purchase OTC medications are able to read labels with the 4.5 point minimum type size. People over 51 years of age have the most trouble reading labels with the 4.5 point type size—only 32 percent were able to read it—and only 63 percent of people under age 51 were able to read the labels.

The comment asserted that although 80 percent of all those surveyed were able to read 6 point reverse type size (which was NDMA's suggested minimum type size for white print on colored background), only 68 percent of the people over 51 were able to read the 6 point reverse type size. Thus, the comment recommended that FDA not accept NDMA's guidelines on minimum type size until further research and testing of consumers' ability to read labels are completed.

2. Public Hearing and August 16, 1995, Request for Comments

In an effort to solicit more information and views on specific aspects of OTC drug product labeling design that would improve the communication of labeling information to consumers, FDA published a notice in the Federal Register (August 16, 1995 (60 FR 42578)), announcing a public hearing on OTC drug product labeling issues. The notice stated that the hearing would address consumer use, legibility and consumer comprehension of OTC drug product labeling, OTC drug product labeling design features, and behavioral issues. The notice requested comments from the public about whether FDA should set standards for type size, color, contrast, type style, spacing, white space, uppercase and lowercase letters, and boldface letters.

FDA stated in the notice that a standardized format would help consumers know what information to look for and where to find it. The agency requested comments on the communication benefits that a uniform, standardized OTC drug product labeling format would provide to consumers. The agency also requested comments about what features should be made consistent on a standardized labeling format (e.g., order of information, major headings or subheadings for information, the use of lines or boxes around information, and certain labeling statements).

Recognizing that proposing a standardized format could necessitate revisions to many of the existing monographs, FDA published a subsequent notice in the Federal Register of September 14, 1995 (60 FR 47752), requesting comments on the process that should be followed by FDA to ensure that any revisions would be

completed in an efficient and expedient manner.

The public hearing was held on September 29, 1995, and included presentations from 22 panelists including representatives from government agencies, universities, industry associations, consumer associations, and corporations. The agency accepted written comments on the notice and the docket until October 30, 1995. Following the public hearing, the agency's Nonprescription Drugs Advisory Committee held a public meeting to further discuss OTC drug labeling issues. (Transcripts of the Advisory Committee meeting are available from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.) A summary of the presentations made at the public hearing and the comments submitted in response to the notice follows:

a. *NDMA's comments.* NDMA supported FDA's initiative to improve OTC drug product labeling, and stated that:

> [b]y establishing mandatory standard headings and subheadings and a mandatory standard order for these headings, simplifying warnings, reducing duplicative and complex wording, and assuring a label that will be uniform throughout the United States, FDA can help to reduce label clutter and promote greater consumer use of label information.

NDMA recommended that FDA adopt uniform headings and subheadings for ''mandatory information'' pertaining to active ingredients, actions, uses, directions, and warnings, and that FDA adopt a standardized order for these headings and subheadings. NDMA also recommended that FDA combine contraindications, warnings, precautions, adverse reactions, and other similar information under one general heading titled ''Warnings.'' In addition, NDMA recommended that the following subheadings be included under the ''Warning'' heading: Complete contraindications; warnings that depend upon a doctor's advice based on the physical condition of the consumer; warnings that relate to pregnancy and nursing, concurrently taking other drugs, or dietary restrictions; in-use precautions; warnings for topical products; and warnings concerning the use of the terms ''doctor'' or ''health professional.''

NDMA recommended a 6 point or greater type size, or 4.5 point as an ''absolute minimum.'' NDMA also recommended the use of bullet points, but did not support mandatory pictograms. NDMA endorsed FDA's current practice of not requiring symbols or pictograms but rather permitting their voluntary use in addition to required warning language. In addition, NDMA recommended that FDA make available an expanded list of alternative words and phrases for OTC labeling terminology.

NDMA also recommended that FDA mandate a uniform national system because multiple State laws could be inconsistent or contradictory with each other and with Federal requirements. NDMA stated that dual, national and State labeling regulations, could confuse the public, undermine the credibility and effectiveness of FDA, create costly and burdensome barriers to interstate commerce, and expose companies to potential product liability suits. NDMA stated that ''[n]ational uniformity is consistent with principles of federalism and will prevent the prospect of fifty 'mini-FDA's' applying a plethora of differing and inconsistent standards that would hinder implementation of FDA's own regulatory scheme.''

Finally, NDMA urged FDA not to amend any monographs for OTC drug ingredients as part of this rulemaking because ''to do so would lengthen the regulatory process and possibly undermine support for a prompt and efficient relabeling process.''

b. *Other comments.* Other comments from individuals, drug companies, and professional associations generally supported FDA's efforts to improve the legibility and understandability of OTC drug product labeling, and most comments supported FDA's recommendation for a standardized format. Many comments endorsed NDMA's recommendations. Most comments did not support a monograph-by-monograph review of OTC drug products to determine what labeling revisions should be made.

Several comments supported the use of color, boxed warnings, pictorials, high contrast, and symbols. Some comments stated that specifying font size is not enough, and that FDA should specify stroke width, color, letter-line spacing, types of fonts, line height, and compression. Other comments recommended that FDA propose standards for the frequency of words, sentence length, and word length. One comment recommended that ornate typefaces, italics, and capitalization of entire words should be prohibited, and that FDA should establish clear standards for leading, contrast, and substrate (i.e., material and finish of the label).

Several comments provided suggestions on how to address the readability and legibility concerns of the elderly population. One comment requested that a bold black box containing the drug's expiration date, lot number, and other important information, such as major drug interactions or warnings, be prominently displayed in the labeling of OTC drug products. One comment stated that, although larger type is preferable, the legibility of text in small copy can be enhanced by using highlighted words, delineation, and paragraphing, without actually increasing text size. The comment stated that the stronger the contrast between the color of the text and the color of the background, the easier it is for the elderly to read the text.

One comment recommended 12 point type as the smallest type size for elderly people. Because the comment recognized that 12 point type is not possible for many OTC drug product labels, the comment urged FDA to consider a sliding scale of typeface sizes based on the size of the product package. One comment stated that 48 percent of adults are not able to read the 4.5 point type, and recommended that the type be at least 6 point.

Several comments asserted that OTC drug product labeling needs to be simplified, so that adults with a low reading comprehension will be able to understand the information. One comment stated that FDA should require a consumer mailing address on all OTC drug product labels so that consumers can write to the company with questions. The comment stated that FDA should not require a toll free phone number because it would be an unreasonable cost burden for small companies.

A comment submitted on behalf of the Uniform Code Council, administrator of the Universal Product Code (U.P.C.), stated that if FDA were to mandate a smaller U.P.C. symbol, it would make product scanning more difficult and would require product manufacturers to relabel at an enormous cost.

A comment from the Cosmetic, Toiletry, and Fragrance Association (and endorsed by NDMA) stated that cosmetic drugs that do not bear dosage limitations should not be required to list active ingredients before the inactive ingredients. The comment contended that the names of most of the active ingredients contained in such products do not have any meaning to most consumers, except in specific situations where those consumers have been advised by a doctor to avoid a specific ingredient or want to do so for other reasons. The comment stated, however, that even in those situations, such consumers are accustomed to examining

the list of ingredients to look for that ingredient.

IV. Efforts to Improve the Design of OTC Drug Product Labeling

A. FDA Efforts

On August 17, 1995, FDA met with NDMA, at NDMA's request, to discuss proposed labeling changes for OTC drug products. At this meeting, NDMA representatives presented a proposal for text simplification (i.e., the use of words understood by persons of low comprehension, and a reduction in the number of words through text consolidation) of the pregnancy-breast feeding warning and the drug interaction precaution statement for OTC drug monograph ingredients.

In February 1996, FDA conducted a focus group study to investigate participant's perceptions of risks and benefits of prescription and OTC drugs (Ref. 13). The study looked specifically at how the participants react to different wording, claims, and statements contained in prescription and OTC drug product labeling. In addition, the study looked at the format and order of the information contained in the labeling. Participants confirmed that it would be beneficial to emphasize side effects and warnings, either by using bullets, bold type, block lettering, or larger type. Although there was no consensus about the best placement order for the information, the participants agreed that ''simple'' directions would be beneficial. In addition, participants stated that they wanted labeling information to be in ''plain English'' so they could better understand what the ingredients were, and how the drug works. Participants stated that this increased knowledge would help to alleviate their concerns of any health risk from taking the drug.

B. States' Efforts

In addition to FDA's efforts, the State of California has taken steps to improve the readability of OTC drug product labeling. On September 12, 1990, the Governor of the State of California signed a bill (AB 2713) to amend the Health and Safety Code regarding the labeling of OTC drug products. Section 1 of the bill states that printed materials on labels and notices packaged with OTC drug products may be difficult to read, presenting a potential danger to the health and safety of customers.

Section 2 of the bill adds the following to the State's Health and Safety Code: (1) Manufacturers of nonprescription drugs that are sold in the State of California shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense; (2) NDMA shall report on a quarterly basis to, and seek advice periodically from, the California State Department of Health Services, consumer groups, health professionals, and drug manufacturers regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information; and (3) the Director of the California State Department of Health Services shall report to the legislature regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information. The effective period of the bill has now lapsed.

C. Industry Efforts

NDMA has taken steps to improve OTC drug product labeling. NDMA endorsed the California legislation and, recognizing the difficulty in reading OTC drug product labeling, appointed a task force on labeling to: (1) Explore the issues associated with label readability, and (2) evaluate the need and opportunity to make labels more easily read and understood by the public. The task force made recommendations on options to achieve such labeling, including type-size, print, style, color, contrast, package inserts, and special larger size packages.

NDMA has also worked with FDA in an effort to improve the legibility of OTC drug product labeling. NDMA issued ''Label Readability Guidelines'' that identify specific technical factors that can be addressed to improve the readability of OTC drug product labels. These guidelines cover major elements of readability pertaining to layout and design (e.g., information placement, hyphenation, uppercase/lowercase letters, paragraphs) and typography and printing (e.g., type size and style, contrast, printing process, color). The guidelines state that no single factor can determine readability by itself because the total effect of all factors must be considered. Because OTC drug product labeling is still difficult to read and understand, despite the voluntary guidelines, NDMA has urged FDA to adopt new regulations.

FDA has also worked individually with a number of companies in their efforts to improve labeling readability and understandability.

V. Description of the Proposed Rule

The proposed rule would establish a standardized labeling format for all OTC drug products and require manufacturers to revise the format and content of current OTC drug product labeling. The proposed rule would not, however, apply to the format or content of the principal display panel. The proposed rule would establish Federal preemption of State and local laws, rules, regulations, or other requirements for OTC drug product labeling content or format that are different from or in addition to those required by FDA. As proposed, this preemption would not include statutory or common law causes of action in tort, based on the format or content of OTC drug product labeling. The agency is, however, specifically requesting comment on several aspects of the scope of the preemptive effect of this regulation.

A. Scope

The proposed format and general content requirements would apply to OTC drug products that are the subject of a pending marketing application, OTC drug products marketed under an existing final OTC drug monograph, and OTC drug products marketed under an approved marketing application. The proposed requirements would also apply to marketed products pending under the monograph review process when the applicable monograph is finalized.

The proposed rule would not apply to any drug labeled as being homeopathic and which is also listed in the Homeopathic Pharmacopeia of the United States (H.P.U.S.). The labeling of such products is addressed in FDA's Compliance Policy Guide 7132.15, ''Conditions Under Which Homeopathic Drugs May Be Marketed.''

As discussed in section II. of this document, OTC drug products marketed under a final OTC drug monograph are subject to the specific labeling requirements contained in the monograph (21 CFR part 330). The agency is proposing that where an OTC drug product is the subject of an applicable final monograph or regulation that contains content and format requirements that conflict with proposed § 201.66, then the format and content requirements in § 201.66 must be followed. For example, where a final monograph states that the indications for use must be listed under the heading ''Indications,'' such a monograph provision would be superseded by proposed § 201.66(c)(3) requiring that indications for use must be listed under the heading ''Uses.''

In the January 15, 1997, Federal Register (62 FR 2218), the agency issued a final rule requiring a specific warning statement in the labeling of drug products in solid dosage form that contain iron or iron salts as an active

ingredient. Although the agency currently is not aware of any marketed OTC drug products that would require such a statement, the agency recognizes that there may be conflicts with the provisions set forth in this proposed rule and the iron final rule. Conforming amendments regarding iron-containing drug products would be proposed and finalized prior to the implementation of the provisions set forth in this proposed rule.

B. Definitions

Proposed § 201.66(b) would define ''active ingredient'' as:

> any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

This definition is consistent with the definition of active ingredient in § 210.3(b)(7) for the CGMP regulations.

As set forth in section 502(e)(3) of the act, proposed § 201.66(b) would define ''established name'' of a drug or active ingredient as the applicable official name designated under section 508 of the act (21 U.S.C. 358), or, if there is no designated official name and the drug or active ingredient is recognized in an official compendium, the official title of the drug or active ingredient in such compendium, or if there is no designated official name and the drug or active ingredient is not recognized in an official compendium, the common or usual name of the drug or active ingredient.

Proposed § 201.66(b) would define ''ingredient'' as any substance in the drug product, whether added to the formulation as a single substance or in admixture with other substances. This definition is consistent with the definition of ingredient in § 201.10(b).

C. Content Requirements

As discussed in sections II.A. and II.B. of this document, the act and implementing regulations require that certain information (such as the established name of the active ingredients, the statement of identity, adequate directions for use, and adequate warnings against unsafe use) appear in OTC drug product labeling. OTC drug monographs require that specific information be included in the labeling of OTC drug products, depending on the therapeutic class and active ingredients covered by the monograph. The agency has also issued regulations that require specific OTC drug products to bear certain warnings. Drugs marketed under an approved marketing application must the labeled in accordance with the labeling approved in that application.

Because the content and format of OTC drug product labeling varies depending on the drug product, consumers often have difficulty finding, reading, and understanding the information. As discussed in section III. of this document, the agency has solicited comments from industry in order to develop a standardized format that would facilitate the readability and understandability of the information presented in OTC drug product labeling. Based on these comments and other information currently available to the agency, the agency is proposing, in § 201.66(c)(1) through (c)(7), that the outside container or wrapper of the retail package (or the immediate container label if there is no outside container or wrapper) of OTC drug products contain the labeling information required in final OTC drug monographs or in approved marketing applications in the order listed in paragraphs (c)(1) through (c)(7), with the appropriate headings and subheadings listed below. The agency is also proposing that the interchangeable terms and the connecting terms listed in proposed § 330.1(i) and (k) shall apply both to the OTC drug monographs set forth in part 331 *et seq.*, and to the OTC drug product labeling requirements provided in part 201. In the case of OTC drugs marketed under a new drug or antibiotic drug application, the use of the these terms to change approved labeling, and the use of the proposed format to change approved labeling, would have to be accomplished in accordance with § 314.70.

Proposed § 201.66(c)(1) would require the section heading ''Active Ingredient (In Each [insert type of dosage unit]):'' or ''Active Ingredients (In Each [insert type of dosage unit]):'', followed immediately by the established name of each active ingredient. For example, the heading would read, ''Active Ingredient (In Each Tablet):''. Other dosage units could include capsule, suppository, or per 5 milliliter (mL) dose or per teaspoon. For other products marketed without discrete dosage units (e.g., most topicals), the section heading would read ''Active Ingredient'' or ''Active Ingredients''. The quantity, proportion, or concentration of each ingredient per dosage unit, if contained in or if required to appear in the labeling, would appear after the established name of each active ingredient. The agency believes that specifying the amount or concentration of active ingredient per dosage unit would provide consumers with information they need to understand how much active ingredient is contained within each unit in the package. This information would allow consumers to make better product comparisons and to have greater information regarding proper dosing, thereby ensuring safe and effective use.

Section 502(e) of the act requires that drug product labeling contain the established name of each active ingredient for drugs fabricated from two or more ingredients. OTC products that are fabricated from two or more ingredients are not currently required to contain a statement of the quantity of each active ingredient unless the product contains one of the ingredients specifically listed in section 502(e)(1) of the act. Current regulations recommend that the labeling of OTC drug products contain the quantitative amount of each active ingredient per dosage unit in the ''Directions for Use'' section of the labeling (§ 330.1(j)). Given the customary conditions under which most consumers of OTC drugs must make a product selection decision, the agency believes that the quantity of each active ingredient within a dosage unit should appear prominently on the labeling. In order for consumers to distinguish among products within a pharmacological category, and select the appropriate product to meet their needs, such information is essential and therefore may be required under sections 201, 502, 505, 507, and 701 of the act (21 U.S.C. 321, 352, 355, 357, and 371). The agency specifically invites comments from the public on this point.

Proposed § 201.66(c)(2) would require that all OTC drug product labeling include the heading ''Purpose:'' or ''Purposes:'', followed by an accurate statement of the general pharmacological category(ies) or the principal intended action(s) of the drug, or, where the drug consists of more than one ingredient, the general pharmacological categor(ies) or the principal intended action(s) of each active ingredient. The information contained after the ''Active Ingredient(s)'' and ''Purpose'' heading would be required to be consistent with the information provided in the applicable OTC drug monographs.

For products that contain more than one active ingredient, the information would be required to be presented in such a way as to make it obvious to the reader which active ingredients are associated with each purpose listed. The proposed rule would require that the ''Active Ingredient'' heading and

information be presented immediately adjacent and to the left of the ''Purpose'' heading and information (proposed § 201.66(d)(5)). The agency is also proposing that where there is more than one active ingredient, the active ingredients be listed in alphabetical order (proposed § 201.66(d)(5)).

An example of how labeling requirements proposed in § 201.66(c)(1) and (c)(2) would appear follows:

Active Ingredients (In Each Tablet):	**Purpose:**
Chlorpheniramine Maleate 2 mg	Antihistamine
Dextromethorphan 15 mg	Cough suppressant
Pseudoephedrine HCl 30 mg	Nasal decongestant

In the example, there are three active ingredients, listed in alphabetical order, followed by the amount of each ingredient per dosage unit, and the purpose for each active ingredient. The purpose is presented in such a way as to make it obvious to the reader which active ingredients are associated with each purpose listed.

Section 201.64 (to become effective on April 22, 1997) will require that OTC drug products intended for oral ingestion that contain 5 milligrams or more of sodium per single recommended dose, state the sodium content per dosage unit on the labeling. Section 201.64(b) will require that the sodium content per dosage unit be listed on a separate line after the heading ''Sodium Content'' as the last statement in the ingredients section. In the Federal Register of April 22, 1996 (61 FR 17807), the agency proposed similar provisions for the labeling of products containing more than specified amounts of calcium, magnesium, and potassium, per single dose.

The agency requests comment on the presentation of this information within the proposed labeling format. For example, information regarding the quantity of sodium, calcium, magnesium, and potassium, could be listed under the heading entitled ''Dietary Information.'' Alternatively, this information could be listed under the heading ''Other Information,'' discussed below. The agency recognizes that the placement of this information within the proposed labeling format may require a conforming amendment to § 201.64. FDA intends to include dietary information on the various formats that will be tested during the comment period.

Proposed § 201.66(c)(3) would require that all OTC drug product labeling include the section heading ''Use:'' or ''Uses:'', followed by the indication(s) for the drug product. An example of how this would appear on the labeling is as follows: ''Use: Aids in the prevention of dental cavities'' (§ 355.50(b)). Another example would be:

Uses: For the temporary relief of these cold symptoms

* sneezing	* nasal congestion, stuffiness
* runny nose	* cough

Proposed § 201.66(c)(4) would require that all OTC drug product labeling include the heading ''Warning:'' or ''Warnings:'', followed by one or more of the specific warning subheadings (proposed § 201.66(c)(4)(i) through (c)(4)(viii)), if applicable.

Proposed § 201.66(c)(4)(i) would require, where appropriate, the subheading ''Warning:'' or ''Warnings:'', followed by any specific warnings that are required for certain products. Such warnings are currently required to appear as the first warning(s) under the heading ''Warnings'', such as the Reye's syndrome warning for aspirin and aspirin-containing drug products that reads ''WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin'' (§ 201.314(h)(1) and (h)(2)). This section would also require that, where appropriate, the subject of the warning be specified in the subheading before the word ''Warning'', for example, ''Allergy Warning:'' and ''Alcohol Warning:'' for certain OTC analgesics.

Proposed § 201.66(c)(4)(ii) would require, where appropriate, the words ''Do Not Use:'', followed by any contraindications for the use of the product. These contraindications are ''absolute'' and are intended specifically for situations where consumers are urged not to use the product unless a prior diagnosis has been established by a physician or for situations in which consumers are urged not to use the product under any circumstances regardless of whether a doctor or health professional is consulted. ''Absolute'' contraindications under this subheading would include the need for a diagnosis of asthma prior to the use of an OTC bronchodilator drug product, monoamine oxidase inhibitor interactions, or allergies to active or inactive ingredients when there is no specific allergy warning heading. For example, this subheading would contain the following for OTC bronchodilator drug products (§ 341.76(c)(1)): ''Do Not Use: this product unless a diagnosis of asthma has been made by a doctor.'' And this subheading would contain the following statement for a nasal decongestant drug product: ''Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. * * * '' (§ 341.80(c)(1)(D)). Another example, for eyewash drug products, would be, ''Do Not Use:'' followed by the warning ''Obtain immediate medical treatment for all open wounds in or near the eyes'' (§ 349.78(c)(2)).

Proposed § 201.66(c)(4)(iii) would require, where appropriate, the words ''Ask a Doctor Before Use'' immediately followed by one or more specific warning subheadings (proposed § 201.66(c)(4)(iii)(A) through (c)(4)(iii)(C)), as appropriate. These specific warnings are intended for situations where consumers should not use the product until a doctor is consulted. Warnings under this heading

include those that contain phrases such as ''unless directed by a doctor,'' ''without first consulting your doctor,'' and ''except under the advice and supervision of a doctor.''

Proposed § 201.66(c)(4)(iii)(A) would require, where appropriate, the words ''If You Have:'', followed by any warnings for persons with certain preexisting conditions (excluding pregnancy, which is discussed under proposed § 201.66(c)(4)(vi) and warnings for use in persons experiencing certain symptoms). Examples of preexisting conditions that would be included are disease states or conditions, such as ''If You Have: heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland'' (§ 341.80(c)(1)(i)(C)). This example, when presented under the proposed format, would appear as follows:

Ask a Doctor Before Use:
If You Have:
* Heart disease
* High blood pressure
* Thyroid disease
* Diabetes
* Difficulty in urination due to enlargement of the prostate gland

Proposed § 201.66(c)(4)(iii)(B) would require, where appropriate, the words ''If You Are:'', followed by any drug/drug interaction warnings and drug/food interaction warnings. An example of when this warning would be used is:

Ask a Doctor Before Use:
If You Are:
* Taking sedatives or tranquilizers
* On a sodium restricted diet

Proposed § 201.66(c)(4)(iii)(C) would require, as an alternative, and where appropriate, the words ''If You:'', followed by a combination of the warnings in paragraphs (c)(4)(iii)(A) and (c)(4)(iii)(B) of this section. For example, this heading would be appropriate if there is only one disease state or condition and one drug/drug interaction or drug/food interaction. An example is:

Ask a Doctor Before Use:
If You:
* Have kidney disease
* Are taking other drugs

Proposed § 201.66(c)(4)(iv) would require, where appropriate, the words ''When Using This Product:'', followed by the side effects that the consumer may experience, and the substances or activities to avoid while using the product (for example, alcohol, operating machinery, or driving a car). An example is:

When Using This Product:
* Use caution when driving a motor vehicle or operating machinery

Proposed § 201.66(c)(4)(v) would require, where appropriate, the words ''Stop Using This Product If:'' followed by any signs of toxicity and other serious reactions that would necessitate the immediate discontinuation of use of the product, followed by the words ''Ask a doctor. These may be signs of a serious condition.'' An example is:

Stop Using This Product If:
* Nervousness, dizziness, or sleeplessness occurs.
Ask a doctor. These may be signs of a serious condition.

The last two sentences would be required to be highlighted by bold type and indented under the ''Stop Using This Product If:'' heading. Alternatively, if there is only one sign of toxicity or serious reaction, this statement would read:

Stop Using This Product If: * * *

Ask a doctor. This may be a sign of a serious condition.

Proposed § 201.66(c)(4)(vi) would provide that any required warnings that do not fit within one of the categories of warnings listed in proposed 201.66(c)(4)(i) through (c)(4)(v), (c)(4)(vii), and (c)(4)(viii) must appear as a separate subsection, without a heading or subheading, after the information appearing under proposed § 201.66(c)(4)(v). For example, a ''For external use only'' warning would appear after the information in the ''Stop Using This Product If:'' section.

Proposed § 201.66(c)(4)(vii) would require, where appropriate, the warning statement for women who are pregnant or breast-feeding a baby, as set forth in § 201.63 and as amended in this proposal. The agency is proposing to amend the pregnancy-nursing section heading and warning statement in response to comments submitted by NDMA (see Docket No. 95N–0259) and to make the warning more concise and understandable. The revised warning statement in § 201.63 would state ''If pregnant or breast-feeding, ask a health professional before use.'' The revised section heading would state ''Pregnancy-breast feeding warning.''

Proposed § 201.66(c)(4)(viii) would require, where appropriate, the ''keep out of reach of children'' warning and the accidental overdose or ingestion warning, as set forth in §§ 201.314(a) and (g)(1), 330.1(g), and as amended in this proposal. The agency is proposing to amend the ''keep out of reach of children'' and the accidental overdose or ingestion warning statements to make them more concise and understandable.

Furthermore, the agency is proposing to delete the recommendation to contact a poison control center because poison control centers do not exist in every State, and thus are not always accessible to all consumers. Instead, the revised recommendation reflects the idea that consumers generally may receive advice on overdose situations by contacting other medical professionals who may be more readily available to the consumer.

The revised overdose warning statements in § 330.1(g) would state: ''The labeling of drugs used by oral administration shall also state: 'In case of overdose, get medical help right away.''' If required, the labeling for all drugs used topically, rectally or vaginally, and not intended for oral ingestion, shall state: ''If swallowed, get medical help right away.'' However, for the specific category of topical drugs that are intended for oral use, the agency recognizes that the statement ''If swallowed, get medical help right away,'' may be confusing to consumers who might think that any swallowing of the product during normal use may be dangerous. Therefore, to clarify to consumers that excessive amounts of the product should not be swallowed, labeling of topical drugs which are intended for oral use shall state, ''If more than used for * * * is accidentally swallowed, get medical help right away'' (see final rule for OTC anticaries drug products, 61 FR 52285 at 52286, October 7, 1996). The agency is also proposing to amend § 201.314(a) and (g)(1) to conform to this new, more concise, overdose warning.

The revised ''keep out of reach of children'' warning statements in §§ 201.314(a) and (g)(1), and 330.1(g) would state: ''Keep out of reach of children.'' The agency is proposing to require this statement to be in bold print.

The agency also intends to revise §§ 369.20 and 369.21 to conform to these revised warning statements at or before the time that this proposed rule is finalized.

Proposed § 201.66(c)(5) would require that all OTC drug product labeling include the word ''Directions:'', followed by the appropriate directions for use. The proposal would require that the directions conform with the appropriate final OTC drug monograph or the approved application.

Proposed § 201.66(c)(6) would require, where appropriate, that OTC drug product labeling include the heading ''Other Information:'' followed by additional information that is not included under proposed § 201.66(c)(1) through (c)(5), but is required by or is optional under an applicable OTC drug monograph or is required under an approved marketing application. If included, this information would be required to immediately follow the ''Directions'' for use section on the label. An example of such required labeling, for pediculicide drug products, is the statement required by § 358.650(e) that describes different types of lice. Another example of such optional labeling is in the monograph for anticaries fluoride treatment rinses (§ 355.50(f)(1)), which permits, but does not require, the statement:

Other Information:

* The combined daily use of a fluoride preventative treatment rinse and a fluoride toothpaste can help reduce the incidence of dental cavities.

Proposed § 201.66(c)(7) would require that the labeling for all OTC drug products that are also cosmetics (as defined by section 201(i) of the act) include the words ''Other Ingredients:'' or ''Inactive Ingredients:'', followed by the cosmetic and/or inactive ingredients that are required to be stated on the label under § 701.3 (21 CFR 701.3). Current § 701.3(d) provides that ''[w]here a cosmetic product is also a drug, the declaration shall first declare the active drug ingredients as required under section 502(e) of the act, and shall then declare the cosmetic ingredients.'' The new standardized format would list the active ingredients before the ''Other Ingredients'' or ''Inactive Ingredients,'' but separated by the other required labeling information (i.e., ''Purpose(s),'' ''Use(s),'' ''Warning(s),'' and ''Direction(s)'').

Although many manufacturers, packers, and distributors voluntarily include a list of inactive ingredients on the labeling of OTC drug products, OTC drug products (that are not also cosmetics) are not currently required to list inactive ingredients on their labeling. In order to standardize the location of this information (if included), FDA is proposing that for OTC drug products that are not also cosmetics, the labeling must include the words ''Inactive Ingredients:'', followed by the inactive ingredients.

FDA has also received a citizen petition (96P–0318, CP1) requesting that existing regulations be changed to require placement of expiration dating on the immediate container of OTC drug products in a visible location so that the

date is legible throughout the use of the product and to adequately adapt the expiration dating to the way consumers use the products, particularly for drug products distributed in tubes. FDA is seeking public comment on whether current regulations should be revised to require expiration dating to appear in a specific location with specific legibility requirements on both the outer and immediate container packaging, especially for products marketed in tubes.

D. Format Requirements

The act and current regulations do not establish a standardized format for OTC drug product labeling. In addition, the agency has determined that some OTC drug product labeling may be difficult to read and understand. The agency understands the need for a flexible application of graphical techniques to achieve an acceptable level of readability for OTC drug product labeling. However, in order to ensure that labeling information is conveyed in a manner that enables the public to readily notice and comprehend such information, the agency is proposing to set minimal standards and requirements for certain key graphic elements of the format of OTC drug product labeling (except for the labeling on the principal display panel). Type size, letter and line spacing, contrast, print and background color, and type style are all factors that may contribute to poor readability and low comprehension of information (Refs. 3, 4, and 5). To provide further assistance to industry, the agency may, in the future, issue a guidance document to provide additional useful guidance on labeling format. The agency is proposing to revise the labeling format as follows:

Proposed § 201.66(d)(1) would require that all headings and subheadings must be in upper and lower case letters, and must be highlighted by bold type that prominently distinguishes the headings and subheadings from other information. FDA is also proposing to permit the use of shading or other color contrast to highlight headings and subheadings. FDA is proposing to require upper and lower case letters because the agency has tentatively determined that words in all upper case letters are harder to read. Consequently, the agency is also proposing to amend other regulations that explicitly require the use of all upper case letters (see §§ 201.63(e), 201.319(b), and 358.650(d)(1)). At the time of publication of the final rule, the agency intends to revise other labeling information that is required to appear in all capital letters to conform with the proposed requirement for the use of upper and lower case letters. FDA would not permit the use of ''reverse type'' (i.e., white or neutral color type on a darker color background) as a form of highlighting because this type of graphic technique is known to have poorer readability than regular type.

The agency is proposing to require that a horizontal line separate each section of information under the major headings listed in § 201.66(c)(1) through (c)(7). For example, a thin hairline would follow the active ingredient/purpose, warnings, directions, other information, etc. The agency believes that horizontal lines will distinctively separate each section of important information to make it more conspicuous and easier to read.

Proposed § 201.66(d)(2) would require that the letter height or type size for headings and subheadings in proposed § 201.66(c)(1) through (c)(7) shall be no smaller than 6 point type. The agency is also proposing that the letter height or type size for all other OTC drug product labeling information (including, but not limited to, information on the outside container or wrapper, the immediate container label (if different), and the package insert (if any)) also shall be no smaller than 6 point type. The proposed minimum 6 point type requirement would not apply to the manufacturer's name and address or the labeling on the principal display panel. The format and content requirements for the principal display panel are set forth under §§ 201.60 and 201.62. The agency requests comments on whether FDA should establish minimum type size requirements for the principal display panel.

Based on the data and comments discussed in section III. of this document, FDA believes that the minimum type size requirements would benefit a substantial number of consumers who have difficulty reading the labeling on OTC drug products. The agency is, however, specifically requesting comment on whether to require that a package insert, or similar accompanying material, printed in a larger point size (such as 10 point type), be included with every OTC drug product. This requirement would help ensure the safe and effective use of OTC drug products by segments of the population (such as the elderly) who may be unable to read 6 point type.

In addition, the agency does not believe that the proposed minimum type size would require applicants, manufacturers, packers, or distributors to increase the size of OTC drug product containers.

The agency is proposing to allow manufacturers, packers, or distributors to delete specific ''connecting terms'' (that do not change the meaning of the information) that are currently required in OTC drug product labeling. Holders of approved marketing applications who wish to delete a ''connecting term'' in their labeling may do so in accordance with § 314.70. The ability to delete these terms would permit applicants, manufacturers, packers, and distributors to format their labeling to fit more legible information into the proposed bulleted format. Thus, FDA believes that the deletion of ''connecting terms'' would in a number of instances compensate for the increased demands on label space that may result from the increased minimum type size.

FDA recognizes that there may be some containers and packages that may not be able to accommodate 6 point type, even with the new proposed format. The agency believes, however, that the available surface area of the labeling on a number of these products could be increased without changing the size of the current container or package. For example, the labels affixed to some bottled drug products may be lengthened and widened to increase the surface area of the label without changing the size of the container. Also, the agency believes that the information presented on boxed drug products can, in some instances, be rotated 90 degrees in order to accommodate the proposed minimum type size without changing the dimensions of the package. The agency expects manufacturers, packers, distributors, and applicants to take all possible steps to increase the available surface area of the labeling, without changing the size of the container or package, in order to accommodate the proposed type size. In addition, the agency is specifically inviting comment on whether it should require manufacturers, packers, distributors, and applicants to use alternative packaging designs, such as extending a single side panel of a package, to increase available labeling space.

The agency also requests comment on whether to require a performance standard for the labeling on containers and packages that may be too small to accommodate 6 point type, and on the important elements such a performance standard should contain. A performance standard would use performance-based measuring techniques, rather than precise minimum requirements on the size, appearance, and format of a product's labeling, to ensure that the labeling is readable and understandable. For example, a performance standard could involve measuring a label's

readability based on a validated test of visual acuity (e.g., whether x number of persons with y visual acuity can read the labeling when it is z inches from the eye under specified or controlled lighting conditions).

Proposed § 201.66(d)(3) would require that all headings, subheadings, and information set forth in proposed § 201.66(c)(1) through (c)(7) shall be legible and clearly presented. The proposal would permit the use of shading or color contrast in order to increase the prominence and conspicuousness of the text. Shading or color contrast, however, would not be permitted to highlight or emphasize specific text or portions of text unless otherwise provided in an approved marketing application, final monograph, or an applicable regulation (e.g., current requirements for bold print in §§ 341.76 and 341.80, and requirement for box and red letters in § 201.318(c)(1)).

The proposal would require that the headings, subheadings, and information be presented in the Helvetica type style, which is an easy-to-read type style, and would require at least 1 point leading for the headings, subheadings, and information set forth in proposed § 201.66(c)(1) through (c)(7). The proposal also specifies, as a minimal kerning requirement, that letters should not touch. FDA believes that setting minimal requirements for upper and lower case type styles, leading, and kerning would enhance the readability of the proposed 6 point type.

Proposed § 201.66(d)(4) would require the use of bullet points to distinguish each piece of information found under each heading and subheading. For example, if there is more than one ''use'' for an OTC drug product, then the information required under the section heading ''Uses'' would be set off by a bulleted point before each unique piece of information. If more than one bulleted phrase is placed on the same horizontal line, the end of one bulleted phrase would be required to be separated from the beginning of the next bulleted phrase by at least two square em's (i.e., two squares of the size of the letter ''M''). The agency is not proposing to specify a graphical icon for bulleted points. The proposed rule would not require the inactive ingredients or other cosmetic ingredients (proposed § 201.66(c)(7)) to be set off by bullet points.

Proposed § 201.66(d)(6) would require that the general labeling information required under the heading ''Warnings'' shall be continuous and not separated in any way, in order to increase the readability of this important information. For example, where the required labeling information is presented on two panels, the warning section shall be contained as a whole on one panel and not divided such that some information is on one panel and the rest is on another panel.

The agency is maintaining its current policy regarding the voluntary use of symbols and pictograms (see pregnancy-nursing warning, at 47 FR 54750, December 3, 1982 (§ 201.63(a)). The agency currently permits the voluntary use of symbols and pictograms, but does not permit symbols or pictograms to be used as a substitute for a required warning; they may only be used in addition to it. The agency, however, would not permit the use of a symbol or pictogram that is confusing or misleading, e.g., one that directs attention away from required labeling information or one that is ambiguous or could easily be misunderstood by consumers.

Examples of prototype OTC drug product labeling are attached in Appendix A. Example 1 demonstrates the general format and style contemplated by the proposed rule, including the proposed headings and subheadings, in the order proposed, as well as the proposed type style, hairlines, and bolding. Example 2 depicts OTC drug labeling for chlorpheniramine maleate, based on the applicable monograph, using the format and content specifications set forth in the proposed rule. The headings are presented in 8 point type, which is larger than the minimum type size proposed by the agency. The information is presented using an ordinary package size for this type of product. Example 3 depicts OTC drug labeling for a combination cough/cold product, based on the applicable monographs, using the proposed format and content specifications. Example 4 demonstrates how the same information shown in Example 3 can be presented directly on the package label for an 8 ounce bottle of syrup.

Examples 5 and 6 depict OTC drug labeling for a topical acne product and for a stannous fluoride product, respectively, based on the applicable monographs and using the format and content specification set forth in this proposed rule. The information is presented using an ordinary package size for each of these products.

Example 7 demonstrates OTC drug labeling for a chlorpheniramine maleate product, based on the applicable monograph, using the proposed amendment to the ''exclusivity policy'' set forth in § 330.1(c)(2) and described in Section V.I. of this document. Note that the approved information from the monograph is surrounded by a hairline forming a box and that the boxed area is entitled ''FDA Approved Information.'' The additional information in this example is optional.

Example 8 demonstrates OTC drug labeling for a combination cough/cold product, based on the applicable monographs, using the proposed content and format specifications, except that the ''Directions'' section is presented before the ''Warnings'' section, and the directions for use are highlighted. The agency specifically requests comment on the order of appearance of the ''Directions'' and ''Warnings'' sections, as well as whether to require highlighting of the information contained in the ''Directions'' section.

Example 9 demonstrates OTC drug labeling for a chlorpheniramine maleate product, based on applicable monographs, using the proposed content and format specifications, except that the order is different than that proposed. The agency specifically requests comments on this, and other alternative for the order of information.

Each of these examples also makes use of proposed § 330.10(i) and (k) by deleting certain ''connecting terms'' and by substituting certain ''interchangeable terms'' as would be permitted by this proposed rule.

Finally, the agency is proposing that the new format will not apply to the product's immediate container, unless the product is sold without an outer package or wrapper. The agency believes that were it to require the proposed labeling format, and the information that would be presented within that format, to appear on the immediate container of all marketed OTC drug products, many products as currently marketed could not conform with the proposed requirements. The agency does not intend to require applicants, manufacturers, packers, and distributors to increase the container size of their products in order to conform to the proposed new format.

The agency recognizes, however, that dual labeling of products that are sold with outer packages or wrappers is beneficial because consumers may discard the outer package. For that reason, the agency is proposing that the letter height or type size for all other OTC drug product labeling information (except for the principal display panel) be no smaller than 6 point type. Thus, important information that is required to appear on the immediate containers of OTC drug products will be more legible to the consumer. The agency invites specific comment on whether additional elements of the proposed

new format, such as certain required headings, presentation of information in a standardized order, or the use of a bullet point format, should also be required for the immediate container labels of all OTC drug products.

E. Location

Proposed § 201.66(e) provides that the labeling information required under § 201.66(c)(1) through (c)(7) must be the first information that appears on the back or side panel of the outside container or wrapper of the retail package (or the immediate container label if there is no outside container or wrapper) of all marketed OTC drug products. FDA is specifying the location of this important information in order to enable consumers to become knowledgeable about OTC drugs and familiar with the type and location of specific information on OTC drug product labeling. Increased knowledge and familiarity with important information would help to ensure the safe and effective use of OTC drug products.

The agency is requiring that this labeling information appear in a uniform location in order to facilitate consumer familiarity with OTC drug product labeling information. Although current regulations require that the ''statement of identity'' and ''net quantity of contents'' appear on the ''principal display panel'' (see §§ 201.60, 201.61, 201.62)), important warning information does not appear in a uniform location in the labeling of various OTC drug products (as discussed in section III. of this document).

F. Exemptions and Deferrals

Some requirements in proposed § 201.66 may be inapplicable or impracticable for certain products. For example, it may be impracticable for a product, because of its attributes, to meet all of the labeling format requirements. Under proposed § 201.66(f), manufacturers, packers, distributors, or applicants may submit written requests to FDA to be exempted from one or more specific requirements in proposed § 201.66(a) through (e). Requests for exemptions would be required to be submitted in the form of a citizen petition under 21 CFR 10.30 of this chapter and should be clearly identified on the envelope as a ''Request for Exemption from § 201.66 (OTC Labeling Format).'' The request for exemption would be required to include documentation that demonstrates why the requirements are inapplicable or impracticable for this product. Such requests would be required to include documentation that demonstrates that the manufacturer has used all other graphical techniques to enhance readability, and has complied with as many of the format requirements in proposed § 201.66 as practicable. The agency seeks comment on whether there are particular types of products or packages that should be granted a regulatory exemption or should be required to meet a performance standard.

In addition, FDA on its own initiative may, based on the particular circumstances presented, exempt or defer any or all of the requirements set forth in these sections.

G. Interchangeable Terms

At the public hearing held by FDA on September 29, 1995, several comments, including NDMA comments, recommended that FDA consider amending its regulations to permit the use of synonyms that would promote greater comprehension among people with low or moderate literacy skills (see Docket No. 95N–0259). In response to these requests, the agency is proposing to amend current § 330.1(i) to include additional terms that may be used interchangeably in any of the labeling established for OTC drug products (including the OTC drug product labeling regulations in part 201, and parts 331 through 358), provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The proposal would not permit the titles of the headings and subheadings specified by the agency in proposed § 201.66(c)(1) through (c)(7) to be changed through the use of interchangeable terms, through the deletion of connecting terms, or in any other manner.

These interchangeable terms would be cross-referenced in proposed § 201.66(g). Expanding the current list of interchangeable terms would permit the formulation of easier to understand and more concise messages on the labeling of OTC drug products.

Because the part of speech (i.e., adjectives, nouns, adverbs, verbs, etc.) is not always the same for words that can be used in different ways, the contextual message conveyed by using certain substituted words may dramatically change the overall meaning of the labeling statement. Consequently, when using any interchangeable word, the meaning must not be changed.

Although these additional terms are based primarily on NDMA's recommendations, the agency is proposing some additional terms that were not included on NDMA's list of recommended terms. In addition, FDA is not proposing all of NDMA's suggestions in this proposal. One example of an NDMA recommendation that FDA is not proposing is NDMA's recommendation that the word ''call'' should be proposed as an interchangeable term with the current word ''contact.'' The agency, however, is proposing ''ask'' instead of ''call'' because FDA does not want to limit other forms of ''contact'' (i.e., visit, or see).

Another example of an NDMA recommendation that FDA is not including in this proposal is the recommended phrase ''use only on skin'' as an interchangeable term with the current phrase ''for external use only.'' The agency is not proposing this phrase because it is not interchangeable for topical ophthalmic or vaginal products. In addition, the phrase could be confusing for products intended to be used on cuts or abrasions.

In the March 1996 proposal, FDA proposed to amend § 330.1(i) to provide for interchangeable terms for the phrases ''unless directed by a doctor'' or ''except under the advice and supervision of a physician.'' Labeling information about not using an OTC drug product under these circumstances appears in different OTC drug monographs in different language, but conveys the same message (see, for example, §§ 341.76(c)(2), 331.30(c)(1) and (c)(4) through (c)(7), 349.75(c)(2), 341.72(c)(3) and (c)(4), 346.50(c)(7)(ii), 341.72(c)(6)(i) through (c)(6)(iii), 358.750(c)(2)(ii), (c)(3), and (c)(4)). In addition, the phrase ''unless directed by a doctor'' has been used more recently and most frequently. The agency determined that all of these phrases could be interpreted in the same way (e.g., ''* * * unless a doctor tells you'') and that this simpler phrase may be better understood by consumers than some of the other phrases. Thus, the agency proposed to amend § 330.1(i) to include the phrase ''unless a doctor tells you'' as an alternative for these other phrases where they appear in the labeling of OTC drug products.

The proposal also stated that, in a few instances, the words ''or your child's doctor'' would be permitted as part of this phrase. The agency requested comments on whether it would be preferable to say ''your'' child's doctor or ''the'' child's doctor, or whether it does not make any difference which wording is used.

FDA received three comments supporting the proposal. NDMA recommended that FDA reconsider its proposal to adopt ''unless a doctor tells you'' because NDMA stated that the

phrase was ''colloquial, awkward and incomplete in its instructional intent.'' (See Docket No. 92N–454A.) Another comment also urged FDA not to adopt the phrase ''unless a doctor tells you,'' because the phrase could lead to ambiguity and confusion. The comments alternatively recommended that FDA adopt the phrases ''unless told to do so by a doctor,'' ''unless you first ask a doctor,'' ''without checking with a doctor,'' or ''without asking a doctor.''

NDMA also recommended that FDA not adopt the phrase ''your doctor'' or ''your child's'' doctor because ''it is limiting and should be dropped in favor of 'a doctor' or 'the child's doctor'.'' NDMA recommended that FDA adopt this broader language because a designated caretaker may administer an OTC drug product in the absence of a parent. Finally, NDMA recommended that FDA permit interchangeable terms defined in the OTC drug review to also be interchangeable with the same terms found in marketing applications.

Another comment recommended that for OTC drug products intended for use in conditions involving the feet (e.g., athletes foot, corns, calluses, etc.) the term ''podiatrist'' be added as an allowable interchangeable alternative to ''doctor'' or ''physician'' because many consumers consult their podiatrist rather than their usual doctor or physician for foot related conditions.

Because this proposed rule addresses the same interchangeable terms (as well as additional interchangeable terms), this proposed rule responds to the comments submitted to Docket No. 92N–454A. Therefore, the agency is, with this notice, formally withdrawing the March 1996 proposal.

FDA has carefully considered the comments and is proposing that the current terms, ''unless directed by a doctor'' and ''except under the advice and supervision of a physician'' be interchangeable with ''unless told to do so by a doctor.'' In addition, the agency is proposing that the phrases ''before a doctor is consulted,'' ''without first consulting your doctor,'' or ''consult your doctor before * * *'' may be interchanged with ''unless first told to do so by [the child's doctor] a doctor.'' The agency agrees with NDMA's comment that ''a doctor'' or ''the child's doctor'' is preferable to ''your doctor'' or ''your child's doctor.''

The agency disagrees with the comment that recommended that the term ''podiatrist'' be interchangeable with ''doctor'' or ''physician'' for OTC drug products intended for use in conditions involving feet (e.g., athlete's foot, corns, callouses, etc.). The agency does not believe that ''podiatrist'' would be an appropriate substitution for ''physician'' for all OTC drug products intended for use involving feet. Because the agency has determined that there may be specific limited instances where the term ''or podiatrist'' may be appropriate, however, current regulations do provide that ''or podiatrist'' may be used in addition to the word ''doctor'' when a wart remover product is labeled with the specific indication found in § 358.150(b)(2).

FDA agrees with NDMA's recommendation that FDA permit interchangeable terms defined in the OTC Drug Review to be interchangeable with the same terms found in approved marketing applications for OTC drug products. Applicants or holders of approved marketing applications for OTC drug products who wish to include an interchangeable term in their labeling would be required, however, to include the interchangeable term in the marketing application or supplemental application in accordance with § 314.70.

The agency recognizes that a large percentage of OTC drug products are purchased at retail stores where a pharmacist is present. FDA also recognizes that pharmacists are knowledgeable about OTC drug products and are trained to counsel and give advice about these products. Although the agency is not proposing the terms ''doctor'' and ''pharmacist'' as interchangeable terms, the agency believes the phrase ''doctor or pharmacist,'' as in ''Ask your doctor or pharmacist,'' may be appropriate guidance on OTC drug product labeling for certain products. The agency seeks comment on whether the phrase ''or pharmacist'' should be included on OTC drug labeling and, if so, on what section of the labeling, and for which products.

H. Connecting Terms

OTC drug product regulations currently contain statements or clauses that are in quotation marks. Information that is presented in a monograph in quotation marks is required to appear in the labeling exactly as it appears in the monograph (except to the extent an interchangeable term may apply). In order for these statements or clauses to fit into the new format, including the required minimum type size, certain words within the quotation marks may have to be deleted. Therefore, proposed § 330.1(k) includes a list of connecting terms that may be deleted from the labeling of OTC drug products required under OTC drug product regulations, including monograph regulations, when labeling is revised to comply with § 201.66, and when such deletion does not alter the meaning of the OTC drug product labeling requirements.

The agency is proposing to permit manufacturers, packers, or distributors to delete these connecting terms because these terms generally do not affect the meaning of the labeling, but are required in current regulations to ensure that sentences are grammatically correct. Holders of approved marketing applications who wish to delete a ''connecting term'' from their labeling may delete the ''connecting term'' in accordance with § 314.70. The agency is proposing this approach to simplify language and to enhance readability for consumers. In addition, the deletion of such connecting words would enable the currently required OTC drug product labeling language to fit into the new format without revising all of the current regulations. These connecting terms would be cross-referenced in proposed § 201.66(g). Manufacturers who choose to delete these connecting terms in the manner described would still be deemed to be using the exact monograph language where monograph language is specified in quotation marks. The agency recognizes that the proposed list does not include all connecting words that could be deleted and invites comment on additional terms.

I. ''FDA Approved Information'' Designation

The agency is also proposing to amend § 330.1(c)(2) regarding the use of the designation ''APPROVED USES'' or other similar designation when a manufacturer, packer, or distributor utilizes the exact language as it appears in an applicable monograph or regulation to state the indications for use. Section 330.1(c), in its present form, allows manufacturers some flexibility in describing the indications for use that are established in applicable monographs or regulations (§ 330.1(c)(2)(i) to (c)(2)(iii)). All other required OTC labeling, including required warnings, must be stated in the exact language established and identified (by quotation marks) in an applicable monograph or regulation (§ 330.1(c)(2)(vi)). Manufacturers, packers, or distributors who choose to delete connecting terms or use interchangeable terms in the manner described in this proposal would still be deemed to be using the exact monograph language where monograph language is specified in quotation marks. The agency is not proposing to change these elements of its ''exclusivity policy'' (see 51 FR 16258).

The agency is, however, proposing to amend § 330.1(c)(2) to make it

consistent with the labeling format proposed in this notice. Specifically, the agency would continue to invite manufacturers, packers, or distributors to use the exact language of a monograph or applicable regulation to describe the indications for use. Manufacturers, packers, or distributors who use such exact language to describe the indications for use would have the option of placing a box around all labeling information that has been established in an applicable final monograph or regulation, and to designate the boxed area, ''FDA Approved Information.'' To be consistent with the standardized format being proposed, no other designation would be permitted, and the designation would appear in bold text with upper and lower cases letters (rather than in upper case letters). Manufacturers, packers, or distributors would not be permitted to use a boxed area around the ''Uses'' heading, but would be required to put a box around all of the information that is established in an applicable final monograph or regulation.

Manufacturers, packers, or distributors would also continue to have the option of using other truthful and nonmisleading statements to describe the indications for use, subject to the provisions of sections 301(d) (21 U.S.C. 331(d)), 502, and 505(a) of the act. As in the existing regulation, labeling that uses other truthful and nonmisleading statements to describe the indications for use could not be boxed and could not contain the ''FDA Approved Information'' designation (see § 330.1(c)(2)(ii)).

The agency recognizes that while it may be limiting the manner in which a manufacturer, packer, or distributor can make use of the boxed labeling technique, the agency is also proposing additional interchangeable terms and connecting terms. The agency believes that these proposed interchangeable terms and connecting terms would provide manufacturers, packers, and distributors more flexibility in using exact language (where exact language has been established or identified by quotation marks in an applicable monograph or regulation) to describe the indications for use. Therefore, manufacturers, packers, and distributors would have more opportunities to make use of the ''FDA Approved Information'' designation and box.

The agency is also considering whether it should instead take the step of deleting altogether the provisions for boxed labeling in § 330.1(c)(2). The agency seeks comment on this point.

J. Preemption

1. Need for Federal Regulation and Preemption

FDA has tentatively determined that to ensure that OTC drug product labeling conveys all material information to the consumer, and that the labeling conveys this information in a manner that is likely to be read and understood by the consumer, State and local rules that would establish different or additional format or content requirements than those in this proposed rule should be preempted.

The agency believes that a standardized format, and a single set of rules regarding the appearance and content of OTC drug labeling, will significantly improve the ability of consumers to read and understand OTC drug labeling. The agency expects that as consumers become familiar with the format, they will more readily recognize and focus on important information contained in the labeling regarding the use of the product. NDMA, the primary trade association representing nonprescription drug manufacturers, likewise has reached the conclusion that by establishing ''a label that will be uniform throughout the United States, FDA can help to reduce label clutter and promote greater consumer use of label information.''

With the number and variety of drug products available OTC, it is the norm that consumers face a range of choices when selecting an OTC drug product. However, all OTC products within the same pharmacological class or with the same principal intended drug action are not identical. Thus, uniformity will allow consumers to easily compare various OTC drug products, without having to take into account potentially confusing, and even misleading, differences in format or style. By helping consumers to easily and meaningfully distinguish among drug products, the agency believes it will increase the likelihood that consumers will select appropriate products for their needs.

A single format for all drug products, wherever sold, will minimize confusion while enhancing the readability and understandability of OTC drug labeling. Within a short period of time after implementation of the final rule, consumers will become familiar with the revised format and will be able to use it similarly to the way that they now use nutritional labeling on foods.

State and local requirements for OTC drug labeling format or content that differ from or add to those established by the proposed rule would interfere with FDA's proposed method and objectives. The proposed regulations are intended to allow consumers to glance at virtually any OTC drug product labeling anywhere in the country and find information in a format they recognize, presented in a manner that is easily read and understood. Consequently, the likelihood of safe and effective use of OTC drug products would be increased. A State or local requirement that differs from the proposed rule with respect to any of the standard format elements could frustrate the basis and purposes of the proposed regulations.

For example, changing the order in which required information must appear, or the size or graphic ''look'' of the area in which drug information will be contained, could confuse consumers and limit the intended effectiveness of the proposed format. Even if each State required only one small variation in the format, the resulting 50 different requirements throughout the country could undermine the goals the agency believes may be achieved through a uniform OTC drug labeling format.

In addition to the need for OTC label standardization and the adverse effect State and local requirements would have on it, State and local requirements could impose additional economic and distributional burdens on industry that ultimately would be borne by consumers. State requirements at variance with the Federal law would force manufacturers to develop unique sets of labeling or stop altogether the supply of OTC drug products to the residents of the jurisdiction involved. Moreover, were manufacturers required to tailor their products to different jurisdictions, they would likely face increased printing and distribution costs, leading to higher OTC drug prices for consumers and, therefore, more limited access for some consumers to safe and effective drugs.

The imposition of different or additional State or local labeling requirements could also make it difficult for some products to fit all of the FDA required labeling information within the proposed format, and may cause more products to have to seek an exemption from the new format.

Finally, the agency has tentatively determined that State or local interests in regulating OTC drug product labeling format or content would be modest when compared to the benefits of a national program. The agency to date has found little evidence to suggest that States or localities have a significant interest in controlling the format or content of OTC drug labeling. Moreover, the agency has tentatively determined that the benefits of clear, concise, and

consistent information that all consumers will receive as a result of this regulation would ordinarily outweigh the value of unique or unusual informational requirements for State or local consumers.

In sum, the agency has tentatively determined that for most consumers there are no inherent differences between States that would justify a need for different State regulation. Implementation of specialized rules could come at the expense of nationally uniform OTC drug labeling, and could ignore other national interests and priorities addressed by the proposed rule.

2. Scope of Proposed Preemption

The agency is proposing to preempt only those State and local requirements that would directly threaten the national uniformity sought to be achieved by the proposed rule, or otherwise directly interfere with the attainment of the agency's objectives outlined in this proposed rule. The agency has tentatively determined that State or local laws, regulations, or rules that establish or continue in effect additional or different requirements with respect to any of the elements of format or content addressed in the proposed rule could have a deleterious effect on the goals sought in this proposed rule. Thus, under the proposed preemption provision, a State or locality may not establish or continue in effect requirements different from or in addition to the agency's requirements with respect to the format (including headings, subheadings, order, boxing or title, lines and spacing, type size, color and contrast, and other format requirements in the proposed rule) or the content of OTC drug labeling. The agency also intends the preemption to apply to requirements that a State or locality may view as improving an agency requirement, such as requiring a larger minimum type size than 6 point and other minimum standards for graphical features. States or localities would similarly be prohibited from requiring more (or less) spacing between lines or letters, or requiring that the information appear in a different order or with different subheadings, or that additional information be included.

As proposed, the scope of this preemption would exclude statutory or common law causes of action in tort, based on the format or content of OTC drug product labeling. Because there may be situations in which information about potential harm from an OTC drug product may not be available to FDA until after an individual consumer may have been harmed, the agency does not want to preclude compensation through tort actions in all cases related to OTC drug product labeling. The agency specifically seeks comment on this exclusion.

The agency recognizes that in rare instances a State or local government may find a compelling need to issue a law, regulation, or ordinance relating to the format or content of OTC drug labeling. For example, there may be certain populations of patients in defined areas of the country who may be more sensitive to a particular aspect of an OTC drug product, and who would need to be warned of that aspect in order to ensure the safe and effective use of the product. Accordingly, the proposed rule contains a procedure for States and local governments to petition for an exemption from the preemption.

Finally, the agency specifically seeks comment on whether State or local warning statements that are different from, or that would be in addition to, those required by FDA should be preempted by this rule.

3. Legal Authority for Federal Preemption

The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution (U.S. Const., Art. VI, Cl. 2). Under the Supremacy Clause of the Constitution, State law may be preempted by Federal law in a number of ways (U.S. Const., Art. VI, Cl. 2.). Congress may preempt State law by so stating in express terms (*Jones* v. *Rath Packing Co.,* 430 U.S. 519 (1977). Section 521 of the act (21 U.S.C. 360k), for example, contains an express preemption provision applicable to devices.

Federal preemption may also be based on any of several ''implied preemption'' principles. First, preemption may be found ''where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation'' (*Hillsborough County* v. *Automated Medical Laboratories, Inc.,* 471 U.S. 707, 713 (1985), quoting *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)), or where ''the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject'' (*Rice,* 331 U.S. at 230; see *Hines* v. *Davidowitz,* 312 U.S. 52 (1941)).

Federal preemption may also be found where Federal law conflicts with State law. Such conflict may be demonstrated either where ''compliance with both federal and state [law] is a physical impossibility'' (*Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142–143 (1963)), or where State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'' (*Hines,* 312 U.S. at 67).

State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *Int'l Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.,* 467 U.S. 461, 477–478 (1984).)

A statutorily authorized regulation may preempt a State or local law under any of these implied preemption theories. (See *City of New York* v. *FCC,* 486 U.S. 57, 63–64 (1988); *Louisiana Public Service Comm'n* v. *FCC,* 476 U.S. 355, 368–369 (1986).) That is, ''federal regulations have no less preemptive effect than federal statutes.'' (See *Fidelity Federal Savings & Loan Association* v. *de la Cuesta,* 458 U.S. 141, 153–154 (1982).) Thus, a federal agency, acting within the scope of its delegated authority, may preempt State or local laws that conflict with or frustrate the purposes of the agency's regulations. (See *City of New York,* 486 U.S. at 64.) In addition, an agency may, under certain circumstances, determine that its authority over an area of regulation is exclusive and expressly preempt State regulation in that area. *Id.* If the agency's choice to preempt ''represents a reasonable accommodation of conflicting policies that were committed to the agency's care by statute [the regulation will stand unless] it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.'' (See *United States* v. *Shimer,* 367 U.S. 374, 383 (1961).)

FDA's proposed regulations are within the scope of its delegated authority. (See section VII. of this document, ''Legal Authority.'') Furthermore, conflicts between State and local OTC labeling laws, with different or additional requirements than those of the Federal law, justify FDA's preemption of such laws. Although Congress did not expressly preempt State law in this area, the agency's action is appropriate because different or additional State and local laws would significantly interfere with both the goals of Federal law and the methods by which the Federal law is designed to achieve those goals.

Conflicting State and local laws for OTC drug labeling could undermine the agency's objectives to ensure greater legibility and comprehension of OTC drug labeling and to help ensure safe and effective use of OTC drug products.

Although States and localities may have an interest in developing their own requirements in the area of OTC drug product labeling, the agency has tentatively determined that the national standard set forth in this proposal is tailored to meet the agency's goal of ensuring safe and effective use of OTC drug products, and that the need for a national standard outweighs the interests of individual States and localities.

VI. Proposed Implementation Plan

The agency is proposing the following implementation plan for the proposed labeling format and content provisions. This proposed implementation plan is intended to minimize the economic impact on the regulated industry, while providing consumers with the benefit of more readable and understandable OTC drug product labeling at the earliest reasonable date. The proposed implementation plan provides implementation dates that vary according to the regulatory status of the particular OTC drug product. A product whose labeling does not comply with the proposed format and content provisions on or after the applicable implementation date would be liable to regulatory action.

The agency generally provides an implementation date of 1 year after the date of publication of the final monograph in the Federal Register for the use of labeling prescribed under a final OTC drug monograph (monograph labeling provisions). Accordingly, the agency is proposing that the implementation date for the new labeling format and content provisions for OTC final monographs, published on or after the effective date of the final rule based on this proposal, would be the implementation date for the applicable final OTC monograph. However, the agency encourages manufacturers, packers, and distributors of products pending under the monograph review process to voluntarily implement the new labeling format when they print new labels.

Because the labeling changes for information required under the final monograph and these new labeling format changes would be effective at the same time, manufacturers would only need to make one label printing to incorporate final monograph information into the new labeling format. In addition, implementation of the provisions of the final rule would be less burdensome because the agency and the industry will have gained information and experience from the planning, preparing, and printing of labeling in the new format for other products covered by either marketing applications or existing final monographs at the time of publication of the final rule. Accordingly, less time should be required for firms to bring OTC drug products pending under the monograph review process into compliance with the new labeling format requirements.

For an OTC combination product for which one component is pending under monograph review and another component is the subject of a final OTC drug monograph on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date for the new labeling format and content provisions would be the earlier of 2 years after the effective date of the final rule based on this proposal or the effective date of the final OTC drug monograph applicable to the component under review. For an OTC combination drug product for which more than one component is pending under the OTC drug monograph review on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date of the new format and content provisions would be the date on which any one of the components first becomes the subject of an effective OTC drug monograph.

For an OTC drug product that is the subject of a pending marketing application on or after the effective date of the final rule based on this proposal, the agency is proposing that the implementation date would be immediately (concurrent with initial product marketing) upon approval of the application. Manufacturers of such products would submit draft labeling in the proposed new format for review as part of the application.

For an OTC product with a low level of distribution (i.e., products with annual sales of less than $25,000), the agency is proposing that manufacturers comply with the new labeling format and content requirements within 3 years of the effective date of the final rule based on this proposal.

For all other OTC drug products, including those products marketed under a final OTC drug monograph, or an approved application, before the effective date of the final rule based on this proposal, the agency is proposing an implementation date of 2 years after the effective date of the final rule based on this proposal. By the applicable implementation date, applicants would be required to submit to FDA necessary changes in their product's labeling that would bring the product's labeling into compliance with the new standardized format requirements. The agency is proposing these dates to provide manufacturers with sufficient time to design and print new labeling and deplete existing stocks of products with old labeling.

Labeling changes to OTC drug products marketed pursuant to a marketing application would be made in accordance with § 314.70. Section 314.70(b) requires that FDA approve a supplement for a labeling change, prior to marketing any product with the labeling change, except for changes described in § 314.70(c)(2) or (d). Under § 314.70(c)(2), a supplement must be submitted at the time the change is made, and does not require agency preapproval if the change, among other things, is to add or strengthen a contraindication, warning, precaution, adverse reaction, or statement on overdose, or to add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product, or to delete a false or misleading indication or claim. Under § 314.70(d) a supplement is not required for a change in labeling concerning, among others, the description of the drug product, how it is supplied, or for an editorial or similar minor change in the labeling. Instead, the change need only be described in the next annual report. Products that are marketed pursuant to an OTC drug monograph are not required to submit labeling to the agency.

The agency intends to work closely with sponsors of products that switch from prescription only status to OTC status prior to the implementation of the final rule on incorporating the new format and content requirements into the products' labeling. With respect to products currently marketed OTC pursuant to a marketing application, the agency is interested in receiving comment on whether changes made pursuant to the provisions set forth in this proposed rule should be made under § 314.70(b), (c), or (d).

The agency intends to make the final rule based on this proposal effective 30 days after the date of its publication in the Federal Register.

The proposed rule would not apply to any homeopathic drug products which are listed in the H.P.U.S. The labeling of such products is addressed in FDA's Compliance Policy Guide 7132.15 entitled ''Conditions Under Which Homeopathic Drugs May Be Marketed.''

VII. Legal Authority

FDA's legal authority to modify and simplify the manner in which certain information is presented in OTC drug product labeling derives from sections

201, 502, 505, 507, and 701 of the act. Regulating the order, appearance, and format of OTC drug product labeling is consistent with the agency's authority to ensure that drug labeling convey all material information to the consumer (21 U.S.C. 321(n) and 352(a)), and that the labeling communicate this information in a manner that is ''likely to be read and understood by the ordinary individual under customary conditions of purchase and use'' (21 U.S.C. 352(c)). Regulating the content of OTC drug product labeling is consistent with FDA's authority to ensure that the products are safe and effective for use (sections 201(n) and (p), 502, 505, and 507 of the act).

More specifically, the act authorizes FDA to regulate the marketing of drug products, including drugs composed wholly or partly of any antibiotic drug, to ensure that they are safe and effective for their intended uses (sections 201(p), 505(d), and 507 of the act). A major element of FDA's authority to ensure the safe and effective use of drug products is through FDA's review, approval, and monitoring of drug product labeling. Determinations about safety and effectiveness are to be made with respect to the conditions prescribed, recommended, or suggested in the labeling (sections 201(p) and 505(d) of the act).

Under section 505(d) and (e), FDA also must refuse to approve a new drug application, and may withdraw approval for a product, if the product's labeling is false or misleading in any particular. Moreover, under section 502(a) of the act, a drug product is deemed to be misbranded if its labeling is false or misleading in any particular. In determining whether the labeling of a drug is false or misleading, the agency must take into account not only the representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal material facts about the consequences that may result when the product is used according to its labeling or under the customary or usual conditions of use (section 201(n) of the act).

The act also provides that a drug product is misbranded, and liable to regulatory action, if:

> any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(Section 502(c))

Implementing regulations in § 201.15 describe a number of situations in which the agency considers information on a drug product's label as lacking the prominence and conspicuousness required by section 502(c) of the act. For example, a labeling statement may lack the prominence and conspicuousness required by section 502(c) of the act by reason of, among others, ''[s]mallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter'' (§ 201.15(a)(6)).

The agency may also take regulatory action to ensure that OTC drug products contain ''adequate directions for use'' and ''adequate warnings'' against unsafe or dangerous uses (section 502(f) of the act).

Finally, section 701(a) of the act authorizes FDA to issue regulations for the efficient enforcement of the act (see *Weinberger* v. *Hynson, Westcott and Dunning, Inc.,* 412 U.S. 609 (1973); see also *National Association of Pharmaceutical Mfrs.* v. *FDA,* 637 F.2d 877 (2d Cir. 1981); *National Confectioners Association* v. *Califano,* 569 F.2d 690 (D.C. Cir. 1978)).

The agency has tentatively concluded that a standardized format, with certain content requirements, for OTC drug products is necessary to fulfill the requirements of the act that information required to appear on the label or labeling of an OTC drug product be placed with such conspicuousness and prominence (as compared with other printed matter) as to render it likely to be read by the ordinary individual under customary conditions of use (section 502(c) of the act), and that the information be presented in a manner designed to communicate all material facts about the safe and effective use of the product to the consumer (section 502(a) of the act). The proposed regulations are also consistent with the agency's authority to ensure that OTC drug products are labeled with directions for use and warning statements that are adequate to guide the consumer in the safe and effective use of these products (section 502(f) of the act).

The currently available information, as summarized in section III. of this document, supports the conclusion that a standardized format and certain content requirements for all OTC drug products would help minimize the potential for consumers to be confused or misled when comparing products within the same pharmacologic class. As the number and variety of drug products available OTC continues to increase, consumers ''under customary conditions of use'' are frequently presented with a range of seemingly similar products. Given the complexity of the information contained on the label of an OTC drug, a standardized format and certain content requirements are necessary in order for the consumer to readily and meaningfully compare OTC drug products.

Finally, the agency believes that a standardized format and certain content requirements are essential to help ensure that consumers are able to recognize and understand important information about an OTC drug's proper use, its contraindications, and the adverse effects and safety hazards associated with its use. As discussed in greater detail in section III. of this document, many consumers have complained that OTC drug labels are difficult to understand and, among other things, that the print size on the labels is too small.

Thus, the agency's authority to ensure that material facts regarding the safe and effective use of an OTC drug product are adequately presented to the consumer derives directly from the agency's authority under sections 201, 502, 505, and 507 of the act. These provisions, combined with the agency's authority under section 701(a) of the act to issue regulations for the efficient enforcement of the act, authorize FDA to issue regulations to ensure that the information necessary to the safe and effective use of an OTC drug product is presented to consumers, and that this information is easily readable, readily understandable, and is not confusing or misleading.

VIII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, in accordance with 44 U.S.C. 3506(c)(2)(B) and 5 CFR part 1320, FDA is providing below the title, description, and respondent description of the information collection contained in this proposal, along with an estimate of the resulting annual collection of information burden. This estimate includes the time needed for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for 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.

Title: Over-the-Counter Human Drugs; Proposed Labeling Requirements.

Description: FDA's legal authority to modify and simplify the manner in which certain information is presented in OTC drug product labeling derives from sections 201, 502, 505, 507, and 701 of the act. Regulating the order, appearance, and format of OTC drug product labeling is consistent with FDA's authority to ensure that drug labeling convey all material information to the consumer (21 U.S.C. 321(n) and 352(a)), and that labeling communicate this information in a manner that is ''likely to be read and understood by the ordinary individual under customary conditions of purchase and use'' (21 U.S.C. 352(c)).

FDA is proposing to amend its regulations governing labeling requirements for human drug products to establish a standardized, more readable format for the labeling of all marketed OTC drug products. The proposed regulation merely standardizes the format for presenting information that is already required to be on the labeling.

The proposed format labeling changes present a one-time burden for manufacturers of OTC drug products marketed under new drug applications. Those manufacturers would have to submit a supplement detailing the labeling changes to be made by the manufacturer to comply with the format requirements. This burden is reflected in the chart below.

Other proposed labeling changes do not constitute collections of information because they provide for disclosure of information supplied by FDA. To enhance readability, proposed §§ 201.63, 201.314, 201.319, and 358.650 modify specific warnings or directions, proposed § 330.1(i) and (k) provide terms that may be used interchangeably in the labeling of OTC drug products and terms that may be deleted from the labeling, and proposed § 201.66(c) specifies words to be used in headings and subheadings on the labeling of the drug products. The proposed regulation specifies the wordings of the required disclosures. These labeling requirements provide for ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' and are, therefore, exempt from OMB review under 5 CFR 1320.3(c)(2).

Proposed § 201.66(d), which requires that the information be displayed in a certain format, is not included in the burden estimate because it is not a collection of information within the meaning of 5 CFR 1320.3.

To avoid double-counting, certain provisions in this proposal have not been included in the burden estimate because they merely cross-reference information collection requirements contained in other regulations. For example, proposed §§ 201.66(f) and (i) do not appear in the burden estimate table. Provisions that merely continue existing labeling requirements, such as proposed § 201.66(c), also have not been included in the burden estimate for this proposal.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.70	350	1	1,050	2	2,100
314.60(a)	350	1	30	2	60
314.97	20	1	102	2	204
314.96(a)	20	1	70	2	140
Total					2,504

[1] There are no capital costs or operating and maintenance costs associated with this collection.

The agency has submitted a copy of the proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, OMB (address above).

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

X. Executive Order 12612: Federalism

FDA has examined the effects of this proposal on the relationship between the Federal Government and the States, as required by Executive Order 12612 on ''Federalism.'' The agency concludes that preemption of State or local rules that establish requirements for OTC drug labeling format and content that would be in addition to, or would differ from, Federal law is consistent with this Executive Order.

Section 3(b) of Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate ''where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope.'' The constitutional basis for FDA's authority to regulate the safety and effectiveness of OTC drugs is well established. Congress' decisions to vest in FDA the responsibility to establish a regulatory scheme over these products demonstrates Congress' view that the safety and effectiveness of these products is an issue of national scope.

Executive Order 12612 expressly contemplates preemption when there is a conflict between the exercise of State and Federal authority under Federal statute (section 4(a)). Moreover, section 4(b) of the Executive Order authorizes preemption of State law in the Federal rulemaking context when there is ''firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the * * * agency the authority to issue regulations preempting State law.'' State and local

laws and regulations that would impose different or additional requirements for OTC drug labeling format or content would undermine the agency's goal of ensuring that OTC drug labeling is easy to read and understand. The agency believes that a consistent format will enable consumers to find the information on OTC drug labeling and will ensure that it meets minimal standards to ensure legibility. Additionally, national consistency in OTC labeling information will ensure that labeling uses language that most consumers can understand, and will facilitate comparisons among like products. A fundamental purpose of the proposed rule is to help ensure the safe and effective use of OTC drug products. The agency believes that the readability and understandability of OTC drug labeling is directly related to the safe and effective use of these products.

Executive Order 12612 requires that Federal preemption be restricted to the minimum level necessary to achieve the objectives of the statute under which the regulations are issued (section 4(c)). The proposed regulation is narrowly drawn and focuses on OTC drug labeling format and content. The proposed regulations set forth a procedure for States and local governments to petition the agency for an exemption from preemption.

As required by the Executive Order, States and local governments will be given, through this notice and proposed rulemaking, an opportunity to participate in the proceedings to preempt State and local laws (section 4(e)). In addition, under the Order, the appropriate officials and organizations representing the States will be consulted before this proposed action is implemented (section 3(a)).

The agency concludes that the policy proposed in this document has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; that this policy is not inconsistent with that Order; that this policy will not impose additional costs or burdens on the States; and that this policy will not affect the ability of States to discharge traditional State governmental functions.

XI. Analysis of Impacts

A. Background and Purpose

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to establish a standardized format for the labeling of all OTC drug products so that the labeling will be easier to read and understand, and will provide consistent information in like situations. The proposed rule is intended to help ensure the safe and effective use of OTC drug products.

B. Qualitative Description of Benefits

Variability and numerous weaknesses in the presentation of critical safety and effectiveness information in OTC drug product labeling make it difficult for consumers to select the most appropriate product and to use the product safely and effectively. For consumers to benefit from such information, this information must be easy to find, readable, readily understood, noted, and acted upon. Yet, despite the critical role of this information, OTC drug product labeling is often presented in small print using a crowded layout with minimal white space. The proposed rule sets forth a minimum standard for type size, leading, and kerning, and standards for type style, and other graphical features. The proposed rule also sets forth standardized headings and subheadings, and a standardized order for information.

At least two implicit benefits will flow from this proposed labeling format. First, an easy to read, standardized labeling format will help ensure that consumers select the right product to meet their needs. The lack of uniform presentation of information currently found on OTC drug product labeling makes product comparisons difficult. Consumers are faced with a number of choices for purchase decisions and can find it difficult to determine which product is right for them, based on their symptoms and their personal health situation. With this new format consumers can more readily and easily determine whether a product contains ingredients that they need or should take. Facilitating product comparisons will reduce market inefficiencies that can result from suboptimal purchases, inappropriate price-quality relationships, and competitive inefficiencies. It can also reduce consumer search and transaction costs and, concomitantly, increase the ability to select products consistent with individual needs.

Because health care costs are increasing and increasing numbers of products are switching from prescription to OTC products, more patients are relying on self-diagnosis and self-treatment. Consequently, the proposed rule will benefit consumers by allowing them to make more appropriate choices for self-treatment, and reduce the trial-and-error approach to self-medication. This can lead to decreased overall health care costs resulting from reduced visits to the doctor or hospital for treatment.

Second, the easy to read, standardized format will directly benefit consumers by helping ensure the safe and effective use of the product. Using the product as labeled can reduce the frequency of the adverse drug experiences associated with OTC drug products. Although the frequency of such events have not been quantified, it can be presumed that enabling consumers to make better choices and more easily understand the information will lead to fewer OTC adverse drug experiences.

The agency is not aware of any definitive studies that could be used to quantify such benefits. In the Federal Register of August 16, 1995 (60 FR 42578), the agency sought written comments addressing quantitative measures of benefits, to aid in the assessment of the costs and benefits of enhanced OTC drug product labeling. Little useful data was submitted in response to this request. The agency, again, requests submission of this data to help evaluate the overall benefits to the public health of having OTC drug labeling that is easy to read and easy to understand.

C. Nature of the Economic Impact

This rule will require the redesign of OTC drug labels in accordance with a predetermined schedule of effective dates. FDA acknowledges the substantial cost of preparing label revisions for thousands of products, as the procedures for each change involve

numerous levels of review and verification, in addition to needed technical production supplies and activities. This analysis, however, finds that, while substantial, a large part of these costs cannot be attributed to the proposed rule, because standard business procedures compel a periodic redesign of most OTC labels. The cost impact of the rule therefore is largely dictated by the agency's required implementation dates. For example, many firms already redesign labels within a 2-year period. These firms would incur little added cost from a rule that allowed a 2-year implementation period. Even if a firm typically redesigned its labeling only every 4 years, half of its labeling would, on average, be replaced within a 2-year period. Thus, this firm would need to accelerate redesign for only one-half of its products. Moreover, even those products whose redesign would have to be accelerated would, on average, lose only one-half of their expected lifetimes. Accordingly, to calculate the incremental cost of this rule, FDA counted only the value that would be lost due to the attenuation of the labeling's useful life, after accounting for those design changes that would have resulted from standard business practice. FDA calculated this cost as the product of the estimated number of products affected, the estimated number of years of lost labeling life, and the estimated lost value of a year of labeling life. Derivations for these variables are discussed below.

1. Number of Products Affected

Once the rule has become fully effective, a new OTC drug product labeling design would be required for each stock keeping unit (individual products, packages and sizes), commonly termed SKU's. Although the agency is unaware of any fully comprehensive data base that provides reliable counts of the number of SKU's that are regulated OTC drugs, A. C. Nielsen (Nielsen), a recognized provider of market research business information and analysis, maintains product data from a sample of 4,000 retail outlets selected to represent the geographical and retail characteristics of the U.S. OTC market. FDA used this data base as a primary source for estimating the size of the affected OTC drug market. According to this source, in 1995 OTC drug products accounted for $18.7 billion in sales in grocery stores, drug stores, and mass merchandise outlets. These sales figures exclude categories of OTC items not ordinarily regulated as OTC drug products such as vitamins, facial make-up, and nutritional supplements, but include product categories that may or may not be regulated as OTC drug products depending on the ingredients and/or product claims, such as some lotions, shampoos, and deodorants. To estimate and refine the count of items covered, FDA allocated the products in Nielsen's inventory into review categories based on their monograph review status. Because there are so few products subject to marketing applications relative to monograph review, it was believed this approach would not significantly bias the allocation. This categorization indicated that OTC drug products that are regulated under the monograph review process accounted for almost 30,000 brand name SKU's. The breakdown of these branded SKU's by monograph review status is as follows: 10,910 are under a final monograph, 8,241 are scheduled to become final within the next 2 years, and the remaining 8,488 after 3 years. (There is some uncertainty with the number ''8,488'' because the Neilsen coverage of products that have sunscreens is incomplete.)

FDA's estimate of the number of SKU's for private label store brands is much less certain, because the Nielsen data base did not provide adequate information for this purpose. Instead, FDA based its estimate on the number of private label store brands likely to be carried by individual retail outlets, multiplied by the number of such outlets in the United States. FDA assumed that only larger retail firms have the resources necessary to compete in the OTC drug product market with their own store label. As shown in Table 2, nearly 400 firms were found likely to market private label brands, including those that operate supermarkets, drug stores, and proprietary stores, with more than 9 establishments, and the very largest mass merchandising firms. According to the Nielsen data, firms that relabel generic OTC drug products carry from 55 to 280 different SKU's, with an average of 135 SKU's per firm. Since large retail stores would compete across more product categories than individual generic relabelers, FDA assumed that such retailers would carry from 100 to 400 SKU's, depending on their size, as displayed in the third column of Table 2. Multiplying the average number of private label store brand SKU's per firm type by the number of retailers adds 71,000 private label SKU's to the branded count. Assuming the same regulatory status distribution as for branded SKU's, FDA estimated that 40 percent of the 71,000 private label SKU's, or 28,400, are currently covered under final OTC drug monographs, 21,300 are scheduled to become final within the next 2 years, and the remainder after 3 years.

TABLE 2.—ESTIMATE OF PRIVATE LABEL SKU'S

Kind of Business	No. of Firms[1]	No. of SKU's[2]	Total SKU's	Average Sales/Firm ($Mil.)[1]
Supermarket				
10–24 establishments	148	100	14,800	133
25–49 establishments	45	150	6,750	380
50–99 establishments	35	200	7,000	750
100 establishments or more	37	350	12,950	4,187
Drug Store				
10–24 establishments	54	150	8,100	48
25–49 establishments	16	200	3,200	121
50–99 establishments	11	350	3,850	144

TABLE 2.—ESTIMATE OF PRIVATE LABEL SKU'S—Continued

Kind of Business	No. of Firms[1]	No. of SKU's[2]	Total SKU's	Average Sales/Firm ($Mil.)[1]
100 establishments or more	23	400	9,200	1,851
Proprietary Store				
10–24 establishments	5	100	500	12
25–49 establishments	4	150	600	(*)
50–99 establishments	1	200	200	(*)
100 establishments or more	1	350	350	(*)
Discount or Mass Merchandising				
10–24 establishments	8			122
25–49 establishments	3			299
50–99 establishments	5			2,160
100 establishments or more	10	350	3,500	8,661
Total affected	390		71,000	

[1] Source: U.S. Department of Commerce, 1992 Census of Retail Trade, Establishment and Firm Size, Table 3.
(*) Withheld to avoid disclosing data for individual companies.
[2] Estimate.

While the proposed rule would affect all OTC drug products covered under monographs, the implementation dates for labeling changes will vary according to regulatory status. Those products currently covered by a final drug monograph or marketing application, or about 39,400 SKU's, would be affected within 2 years of publication of this final rule. A second group of up to 29,550 SKU's could be affected by the final rule, depending on the timing of the publication of their final OTC drug monographs. Monographs for the remaining 29,788 SKU's are assumed to become final only after publication of this rule. Since products marketed under these OTC drug monographs would require labeling changes regardless of this rule, no costs were assigned to this latter group of products. Table 3 presents FDA's estimates of the number of SKU's for each respective regulatory status.

TABLE 3.—NUMBER OF ESTIMATED SKU'S BY REGULATORY STATUS

	Brand name	Private	Total
Final	10,910	28,400	39,310
Final by 1998	8,241	21,300	29,541
Remaining	8,488	21,300	29,788
Total	27,639	71,000	98,639

2. Cost of a Labeling Redesign

In the August 16, 1995, Federal Register notice announcing the September 29, 1995, public hearing, FDA requested economic data on the cost to design OTC drug product labeling, but received only one written comment with quantitative data. The agency obtained other estimates of labeling costs, but they vary widely and generally include the cost of redesigning the principal display panel (PDP) as well as the labeling affected by this proposal. Estimates of the average cost to redesign, including the cost of redesigning the PDP, ranged from $2,700 to $10,000 per SKU for branded products, and from $500 to $1,500 per SKU for private label products. (These costs included the drafting of language, art work, review, and implementation.) If the PDP accounts for 50 percent of the cost to redesign branded products, the average cost to redesign the labeling of the branded products affected by this proposal would be $1,350 to $5,000 per SKU. These high volume, nationally marketed, brand name OTC drug products, make up a small portion of the total number of OTC drug products, but the majority of the sales. For this analysis, FDA assumed that 20 percent of the SKU's affected by this proposal will be branded products, with incremental redesign costs of $1,350 to $5,000, and the remainder of the SKU's will have incremental costs ranging from $500 to $1,500 per SKU. Using the midpoints of the incremental redesign cost ranges, the average incremental cost to redesign OTC drug product labeling, weighted for type of product, is $1,500 per SKU.

Several industry comments indicated that most companies redesign OTC drug product labeling periodically, as part of standard business practice. Some companies redesign OTC drug product labeling more than once a year, while others redesign every 3 to 6 years. With the proposed 2-year implementation period, firms that normally redesign labeling every 2 years or less should incur no incremental costs as a result of this proposed rule.

3. Methodology

To calculate the economic impact on industry, FDA made the following assumptions:

Frequent labeling redesigns and the cost of printing labeling are part of the cost of doing business in the OTC drug product industry. As standard business practice, the labeling for 20 percent of the SKU's affected by the proposal are redesigned at least every 2 years; for the remainder of the SKU's, 50 percent are redesigned every 3 years and 50 percent are redesigned every 6 years.

In any given year, the number of OTC drug products requiring redesign are evenly distributed over the labeling life. For example, if the average life of a labeling design is 3 years, one-third of the products are redesigned in year one, one-third in year two, and one-third in year three. Moreover, in any given year, the expected return from the labeling design is constant (straight line depreciation of the labeling's value).

As a result, the economic impact of requiring OTC drug product labeling redesign can be measured as the lost value of the existing labeling designs. FDA estimated this loss as the amortized cost, using a discount rate of 7 percent, of the number of years of labeling use lost.

The above assumptions imply that 20 percent of the SKU's will incur no incremental costs, because their labeling would normally be redesigned within the proposed rule's 2-year implementation period. For the remaining SKU's, the loss will range from 1 to 4 years of the remaining usefulness of the design. The calculation of the economic impact (EI) was prepared in two steps and summed: First, for labeling designs with a 3-year expected life and second, for labeling designs with a 6-year expected life.

4. Total Incremental Cost

Table 4 presents estimates of the incremental costs of this rule under alternative implementation periods. The estimates are shown for products currently covered under a final OTC drug monograph and for OTC drug products expected to be covered under a final OTC drug monograph as of the time the final rule is published. The cost to industry would range from $1.4 million for a 5-year implementation period to $43.2 million for the 1-year period. The shorter implementation periods are associated with higher costs because firms lose a greater part of a label's useful life. With a 2-year implementation period, the cost to industry would be $11.3 million for final OTC drug monographs and $8.5 million for OTC drug monographs under review, for a total cost of $19.8 million. Actual costs for the set of OTC drug monographs under review will depend on the number of SKU's affected by each monograph and the timing of the respective publication dates.

TABLE 4.—TOTAL INCREMENTAL COSTS OF LABELING CHANGE FOR AFFECTED SKU'S ($ MILLION)

Years to Implement	Final Monographs	Monographs Under Review (final by 1998)	Total Cost
1	24.7	18.5	43.2
2	11.3	8.5	19.8
3	5.0	3.7	8.7
4	2.5	1.9	4.4
5	0.8	0.6	1.4

To reduce the economic impact on small entities, the proposed rule would allow an additional year for individual OTC drug products having sales of less than $25,000 per year. According to the Nielsen data, this extension applies to about 40 percent of the OTC drug products, but accounts for only about 1 percent of retail sales. (To calculate costs for the 40 percent, it was assumed that the labeling design for half of the SKU's had a 3-year expected life, and the other half, a 6-year life.) With this extension and a 2-year implementation period, the cost to industry would be about $14.2 million, almost a 30 percent reduction in the economic burden (Table 5).

TABLE 5.—SMALL BUSINESS ALTERNATIVES ($ MILLION)

Years to Implement	Small Business Extension		
	Total Costs	1 Year	2 Year
1	43.2	28.6	23.1
2	19.7	14.2	12.0
3	8.7	6.5	5.1
4	4.3	2.9	2.2
5	1.4	0.7	0.7

D. Small Business Impact

1. Need For, and Objectives of the Rule

Variability in the design, format, and placement of required labeling information may cause difficulties for consumers in both finding and reading information on OTC drug product labeling regarding safe and effective use. For consumers to benefit from having information, they must not only have ready access to the information, but it must also be readable and readily understandable. If information is not processed or is ignored because of factors affecting readability, such as small print size or crowded format, it cannot provide the expected benefits that would result from safe and effective use.

The purpose of this proposed rule is to establish a standardized format for the labeling of all OTC drug products so that the labeling will be easier to read, have uniform presentation of information, and consistent information in like situations. The proposed rule is intended to help ensure the safe and effective use of OTC drug products.

2. Types of Small Entities Affected

OTC drug product manufacturers and those entities that engage in the

relabeling of OTC drug products would be required to revise product labeling. Census data provide aggregate industry statistics on the number of manufacturers for Standardized Industrial Classification Code 2834 Pharmaceutical Preparations by establishment size, but do not distinguish between manufacturers of prescription and OTC products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

IMS data on manufacturers of OTC drug products were also analyzed as an alternative method for estimating the number of small entities affected. Roughly 400 firms were identified as manufacturers of OTC products covered by IMS. Using the SBA size designation of 750 employees, 31 percent of the firms are large, 46 percent are small, and size data were not available for another 23 percent. Therefore, from 184 to 276 of the affected manufacturing firms would be considered small.

The agency is uncertain of the number of entities that relabel OTC products under private label store brands, but estimates that about 400 retail firms will need to relabel. (See Table 2.) These large retail stores offering private labels have average sales well above the SBA designations for small businesses.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

This regulation would affect the information content and format associated with OTC drug product labeling. Firms that manufacture or relabel OTC drug products will need to change the information panel for each affected product. Since the agency has coordinated these requirements with labeling changes conducted in the normal course of business, many of these costs will be mitigated. Those OTC drug products that are marketed under a marketing application would need to submit revised labeling to the agency in accordance with § 314.70. This is a standard procedure that companies routinely follow for OTC drug product labeling changes. The proposed rule would not require new reporting and recordkeeping activities. Therefore, no additional professional skills are necessary.

4. Alternatives and Steps to Minimize the Impact on Small Entities

The proposed rule would require affected entities to change the information panel for affected OTC drug products. Among the steps the agency is taking to minimize the impact on small entities are: (1) To provide enough time for implementation to enable entities to use up existing labeling stock, (2) to provide sufficient time to coordinate a substantial proportion of the labeling changes with routine industry-initiated labeling changes, (3) to provide a mechanism for applying for an exemption or a deferral (when the requirements are judged inapplicable or impracticable), and (4) to provide an additional year to comply for individual OTC drug products having sales of less than $25,000 per year. Allowing 1 additional year for OTC drug products with sales of less than $25,000 per year reduces total industry costs by $5.5 million. While this last provision to extend the compliance time is targeted primarily at small entities, it provides flexibility for a substantial number of individual OTC drug products (about 40 percent), and the impact on overall retail sales would be negligible (less than 1 percent). The agency believes that the above actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected a voluntary labeling scheme, as previous industry efforts have been unsuccessful in achieving both a uniform format and an acceptable minimum print size for a majority of products in a timely manner. Further, a voluntary program would not provide relief to industry for conflicting labeling requirements at the State level.

The agency considered alternative implementation periods as options for all affected entities and for small entities. Industry costs for these implementation options are presented above in Tables 4 and 5, respectively. The agency selected a 2-year implementation period for all affected products. This reduces costs from $43 million (for a 1-year period) to $20 million. In order to further reduce the economic burden for small entities, the agency provided one additional year for low volume products. This alternative reduces total industry costs to $14 million. The agency believes that its approach provides significant reduction in cost while meeting the agency objective of achieving a standardized labeling format for a majority of products in a timely manner.

The agency considered but rejected revising all monographs on an individual basis because this approach would not achieve a standardized labeling format for a majority of products in a timely manner.

This analysis shows that this rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some small entities may incur significant impacts. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandate Reform Act does not apply to the proposed rule because it would not result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

XII. Request for Comments

Interested persons may, on or before June 27, 1997, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

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

(1) Holt, G. A., and E. Hall, ''The Self-Care Movement,'' *in* ''Handbook of Nonprescription Drugs,'' 9th ed., American Pharmaceutical Association, Washington, 1990.

(2) Holt, G. A., et al., ''OTC Labels: Can Consumers Read and Understand Them?'' *American Pharmacy*, NS30:51–54, 1989.

(3) Watanabe, R. K., ''The Ability of the Geriatric Population to Read Labels on Over-the-Counter Medication Containers,'' *Journal of the American Optometric Association*, 65:32–37, 1994.

(4) Wilkins, A. J., and M. I. Nimmo-Smith, ''The Clarity and Comfort of Printed Text,'' *Ergonomics*, 30:1705–2020, 1987.

(5) Kalsher, M. J., et al., ''Enhancing the Perceived Readability of Pharmaceutical Container Labels and Warnings: The Use of Alternative Designs and Pictorials,'' Proceedings of the Human Factors and Ergonomics Society 38th Annual Meeting, 1994.

(6) Landress, H. J., and M. A. Morck, ''Prevalence and Risk of Medication

Mismanagement by the Elderly,'' *Journal of Florida Medical Association,* 71:261–266, 1984.

(7) Desaulniers, D. R., ''Layout, Organization, and the Effectiveness of Consumer Product Warnings,'' *Human Factors Prospectives on Warnings,* Kenneth R. Laughery, Michael S. Wogalter, and Stephen L. Young (editors), the Human Factors and Ergonomics Society, pages 26–30, 1994.

(8) Manasse, H. R., ''Medication Use in an Imperfect World,'' ASHP Research and Education Foundation, 1989.

(9) Caranasos, G. J., R. B. Stewart, and L. E. Cluff, ''Drug-Induced Illness Leading to Hospitalization,'' *Journal of the American Medical Association,* 228:713–717, 1974. Quoted in J. E. Fincham, ''Over-the-Counter Drug Use and Misuse by the Ambulatory Elderly: A Review of the Literature,'' *Journal of Geriatric Drug Therapy,* 1:3–21, 1987.

(10) Fincham, J. E., ''Over-the-Counter Drug Use and Misuse by the Ambulatory Elderly: A Review of the Literature,'' *Journal of Geriatric Drug Therapy,* 1:3–21, 1987.

(11) Lumpkin, J. R., et al., ''A Shopping Orientation Based Prescription for the Treatment of OTC Medication Misuse Among the Elderly,'' *Health Marketing Quarterly,* 8:95–118, 1990.

(12) Meckstroth, S., M. Scheartz, and N. Arawal, ''NSAIDs—Safety Implications of Over-the-Counter Availability,'' *Drug Safety,* 7:221–244, 1992.

(13) Macro International Inc., ''Women's Health Study Focus Groups Report,'' presented to the U.S. Food and Drug Administration on March 26, 1996.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the proposed rule to amend 21 CFR 330.1 (61 FR 8450, March 4, 1996) is withdrawn, and it is proposed that 21 CFR parts 201, 330, and 358 be amended to read as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.63 is amended by revising the section heading, the first sentence in paragraph (a), and the warning statement in paragraph (e) to read as follows:

§ 201.63 Pregnancy breast-feeding warning.

(a) The labeling for all over-the-counter (OTC) drugs that are intended for systemic absorption, unless specifically exempted, shall contain a general warning under the heading ''Warning'' (or ''Warnings'' if it appears with additional warning statements) as follows: ''If pregnant or breast-feeding, ask a health professional before use.''

* * *

* * * * *

(e) * * *

''IT IS ESPECIALLY IMPORTANT NOT TO USE'' (SELECT ''ASPIRIN'' OR ''CARBASPIRIN CALCIUM,'' AS APPROPRIATE) ''DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY.''

3. New § 201.66 is added to subpart C to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

(a) *Scope.* This section sets forth the format and content requirements for the labeling of OTC drug products. Where an OTC drug product is the subject of an applicable final monograph or regulation that contains content and format requirements that conflict with this section, then the content and format requirements in this section must be followed.

(b) *Definitions.* The following definitions of terms apply to this section:

(1) *Act* means the Federal Food, Drug, and Cosmetic Act (secs. 201 *et seq.* (21 U.S.C. 321 *et seq.*)).

(2) *Active ingredient* means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

(3) *Established name of a drug or active ingredient* means the applicable official name designated under section 508 of the act, or, if there is no designated official name and the drug or active ingredient is recognized in an official compendium, the official title of the drug or active ingredient in such compendium, or, if there is no designated official name and the drug or active ingredient is not recognized in an official compendium, the common or usual name of the drug or active ingredient.

(4) *FDA* means the Food and Drug Administration.

(5) *Ingredient* means any substance in the drug product, whether added to the formulation as a single substance or in admixture with other substances.

(c) *Content requirements.* The outside container or wrapper of the retail package, or the immediate container label if there is no outside container or wrapper, of all marketed OTC drug products shall contain the labeling information required in the applicable final OTC drug monograph or in the labeling of an approved marketing application of an OTC drug product, in the order listed in paragraphs (c)(1) through (c)(7) of this section, under the appropriate headings and subheadings listed therein. The headings and subheadings shall be highlighted by bold type.

(1) ''Active Ingredient (In Each [insert type of dosage unit]):'' or ''Active Ingredients (In Each [insert type of dosage unit]):'', followed by the established name of the active ingredient(s) and, if contained in or if required to appear in the labeling, the quantity or proportion of each active ingredient per dosage unit. For products marketed without discrete dosage units (e.g., most topicals), the section heading shall read ''Active Ingredient:'' or ''Active Ingredients:'', followed by the established name of the active ingredient(s) and, if contained in or if required to appear in the labeling, the quantity or proportion of each active ingredient;

(2) ''Purpose:'' or ''Purposes:'', followed by an accurate statement of the general pharmacological category(ies) or the principal intended action(s) of the drug or, where the drug consists of more than one ingredient, the general pharmacological categor(ies) or the principal intended action(s) of each active ingredient;

(3) ''Use:'' or ''Uses:'', followed by the indication(s) for the specific drug product;

(4) ''Warning:'' or ''Warnings:'', followed by one or more of the following specific warning subheadings, if applicable:

(i) ''Warning:'', followed by any specific warnings that are required for certain products (such as Reye's syndrome for drug products containing

salicylates (§ 201.314(h)(1))). Where appropriate, the subject of the warning must be specified in the heading before the word ''Warning'' (such as ''Allergy Warning:'' or ''Alcohol Warning:'');

(ii) ''Do Not Use:'', followed by any contraindications for use with the product. These contraindications are ''absolute'' and are intended specifically for situations where consumers should not use the product unless a prior diagnosis has been established by a physician or where consumers should not use the product under any circumstances regardless of whether a doctor or health professional is consulted; or

(iii) ''Ask a Doctor Before Use'', immediately followed by one or more of the following specific warning subheadings, as appropriate. These specific warnings are intended only for situations where consumers should not use the product until a doctor is consulted:

(A) ''If You Have:'', followed by any warnings for persons with certain preexisting conditions (excluding pregnancy) and warnings for persons experiencing certain symptoms;

(B) ''If You Are:'', followed by any drug/drug interaction warnings and drug/food interaction warnings; or

(C) ''If You:'', followed by a combination of the warnings listed in paragraphs (c)(4)(iii)(A) and (c)(4)(iii)(B) of this section;

(iv) ''When Using This Product:'', followed by the side effects that the consumer may experience, and the substances or activities to avoid while using the product;

(v) ''Stop Using This Product If:'', followed by any signs of toxicity and other serious reactions that would necessitate immediately discontinuing use of the product, followed by the words: ''Ask a doctor. These may be signs of a serious condition'' (highlighted by bold type) or ''Ask a doctor. This may be a sign of a serious condition.'' (highlighted by bold type));

(vi) Any required warnings that do not fit within one of the categories of warnings listed in paragraphs (c)(4)(i) through (c)(4)(v), (c)(4)(vii), and (c)(4)(viii) of this section;

(vii) The pregnancy-breast feeding warning set forth in § 201.63 of this part; or

(viii) The ''Keep out of reach of children'' warning and the overdose/accidental ingestion warning, as set forth in § 330.1(g) of this chapter;

(5) ''Directions:'', followed by the directions for use;

(6) ''Other Information:'', followed by additional information that is not included under paragraphs (c)(1) through (c)(5) of this section, but is required by or is optional under an applicable OTC drug monograph or is included in the labeling of an approved marketing application for an OTC drug product, where appropriate. If included, this information must immediately follow the ''Directions'' for use section;

(7) ''Other Ingredients:'' or ''Inactive Ingredients:'', followed by the cosmetic and/or inactive ingredients, as appropriate.

(d) *Format requirements.* All required labeling information for OTC drug products, except for the labeling on the principal display panel, shall be printed in accordance with the following specifications:

(1) All headings and subheadings set forth in paragraphs (c)(1) through (c)(7) of this section shall use only upper and lower case letters and shall be highlighted by bold type that prominently distinguishes the headings and subheadings from other information. In addition, shading or color contrast may be used to highlight headings and subheadings. Reverse type is not permitted as a form of highlighting. A horizontal line shall separate each section of information under the major headings listed in paragraphs (c)(1) through (c)(7) of this section;

(2) The letter height or type size for headings and subheadings set forth in paragraphs (c)(1) through (c)(7) of this section and all other required OTC drug product labeling shall be no smaller than 6 point type, except for the manufacturer's name and address;

(3) All headings, subheadings, and information set forth in or required under paragraphs (c)(1) through (c)(7) of this section shall be legible and clearly presented. The headings, subheadings, and information shall be presented only in the Helvetica type style. At least 1 point leading (i.e., space between two lines of text) shall be used for the headings, subheadings, and information set forth in or required under paragraphs (c)(1) through (c)(7) of this section, and letters shall not touch. Shading or color contrasts may be used to increase the prominence and conspicuousness of the text, but shall not be used to highlight or emphasize specific text or portions of text unless otherwise provided in an approved marketing application, final monograph, or an applicable regulation (e.g., current requirements for bold print in §§ 341.76, 341.80 of this chapter, and requirement for box and red letters in § 201.318(c)(1));

(4) Each unique labeling requirement for OTC drug product information listed under the headings and subheadings in paragraphs (c)(1) through (c)(6) of this section shall be preceded by a bullet point. If more than one bulleted phrase is placed on the same horizontal line, the end of one bulleted phrase shall be separated from the beginning of the next bulleted phrase by at least two square em's (i.e., two squares of the size of the letter ''M'');

(5) The heading and information required under paragraph (c)(1) of this section shall appear immediately adjacent and to the left of the heading and information required under paragraph (c)(2) of this section. Where there is more than one active ingredient, the active ingredients shall be listed in alphabetical order; and

(6) All information required under the general heading ''Warnings'' shall be presented in one continuous space and shall not be separated in any way on the labeling.

(e) *Location.* All information required under paragraphs (c)(1) through (c)(7) of this section shall be the first information that appears on the back or side panel of the outside container or wrapper of the retail package, or the immediate container label if there is no outside container or wrapper, of all marketed OTC drug products.

(f) *Exemptions and deferrals.* FDA on its own initiative or in response to a written request from any manufacturer, packer, distributor, or applicant, may exempt or defer, based on the particular circumstances presented, or on more specific requirements set forth in this section on the basis that the requirement is inapplicable or impracticable. Requests for exemptions shall be submitted in the form of a citizen petition under § 10.30 of this chapter, and should be clearly identified on the envelope as a ''Request for Exemption from 21 CFR 201.66 (OTC Labeling Format).'' Such requests shall include documentation which demonstrates why a requirement of this section is inapplicable to or impracticable for the labeling of the OTC drug product, and which demonstrates that the manufacturer, packer, distributor, or applicant has complied with as many of the format requirements in this section as practicable, including the use of all other graphical techniques to enhance readability.

(g) *Interchangeable terms and connecting terms.* The terms listed in § 330.1(i) of this chapter may be used interchangeably in the labeling of OTC drug products, provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The terms listed in § 330.1(k) of this chapter may be deleted from the labeling of OTC drug products when the

labeling is revised to comply with this section, provided such deletion does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation. The terms listed in § 330.1(i) and (k) of this chapter shall not be used to change in any way the specific headings and subheadings required under paragraph (c)(1) through (c)(7) of this section.

(h) *Preemption.* No State or local governing entity may establish or continue in effect any law, rule, regulation, or requirement for OTC drug product labeling format or content that is different from, or in addition to, that required by FDA. This paragraph is not intended to preempt statutory and common law causes of action in tort.

(i) *Requests for exemption from preemption.* A State or local governing entity may request an exemption from preemption upon petition under § 10.30 of this chapter. A petition for an exemption shall contain a detailed explanation of why an exemption should be granted, and include supporting documentation and data justifying the need for an exemption.

(j) An OTC drug product that fails to comply with the format and content requirements in this section is liable to regulatory action.

4. Section 201.314 is amended by revising the first two sentences in paragraph (a) and paragraph (g)(1) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

(a) The label of any oral drug preparation intended for sale without prescription and which contains any salicylate ingredient (including aspirin, salicylamide, other salicylates, and combinations) must bear a conspicuous warning statement in heavy block type on clearly contrasting background, such as: ''Warning—Keep out of reach of children'' (highlighted in bold type). ''In case of overdose, get medical help right away.'' * * *

* * * * *

(g)(1) The label of any drug containing more than 5 percent methyl salicylate (wintergreen oil) should bear a conspicuous warning such as: ''Warning: Do not use otherwise than as directed. 'Keep out of reach of children' (highlighted in bold type). The labeling of drugs shall also state as follows: For drugs used by oral administration, ''In case of overdose, get medical help right away;'' for drugs used topically and not inteded for oral ingestion, If swallowed, get medical help right away.''

* * * * *

5. Section 201.319 is amended by revising paragraph (b) to read as follows:

§ 201.319 Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including, but not limited to agar, alginic acid, calcium polycarbophil, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B-1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil tragacanth, and xanthan gum) as active ingredients; required warnings and directions.

* * * * *

(b) Any drug products for human use containing a water-soluble gum, hydrophilic gum, or hydrophilic mucilloid as an active ingredient in an oral dosage form when marketed in a dry or incompletely hydrated form as described in paragraph (a) of this section are misbranded within the meaning of section 502 of the Federal Food, Drug, and Cosmetic Act unless their labeling bears the following warnings and directions:

'''Warnings' (highlighted in bold type): Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have difficulty in swallowing. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention;'' and

'''Directions' (highlighted in bold type):'' (Select one of the following, as appropriate: ''Take'' or ''Mix'') ''this product (child or adult dose) with at least 8 ounces (a full glass) of water or other fluid. Taking this product without enough liquid may cause choking. See warnings.''

* * * * *

PART 330—OVER–THE–COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

6. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

7. Section 330.1 is amended by revising paragraphs (c)(1), (c)(2)(i), and (c)(2)(ii), by removing the first three sentences in paragraph (g) and adding two sentences in their place, and by revising, paragraph (i), and by adding new paragraph (k) to read as follows:

§ 330.1 General conditions for general recognition as safe, effective, and not misbranded.

* * * * *

(c)(1) The product is labeled in compliance with chapter V of the Federal Food, Drug, and Cosmetic Act (the act) and subchapter C *et seq.* of this chapter, including the format and content requirements set forth in § 201.66 of this chapter. An OTC drug product that is not in compliance with chapter V and subchapter C, including § 201.66, is liable to regulatory action. For purposes of § 201.61(b) of this chapter, the statement of identity of the product shall be the term or phrase used in the applicable monograph established in this part.

(2)(i) The label and labeling of the product contain in a prominent and conspicuous location the labeling describing the product information that has been established in an applicable final monograph. At the option of the manufacturer, this labeling may be designated ''FDA Approved Information.'' If the designation ''FDA Approved Information'' is used, the product labeling information that has been established in an applicable final monograph, or by regulation, shall appear within a boxed area and shall be stated in the exact language of the monograph or the regulation (i.e., stated in the exact language that has been established and identified by quotation marks in an applicable monograph or by regulation (e.g., § 201.63 of this chapter)).

(ii) At the option of the manufacturer, as an alternative to the requirements of paragraph (c)(2)(i) of this section, the label and labeling of the product may contain in the ''Uses'' section, other truthful and nonmisleading statements describing only those indications for use that have been established in an applicable monograph, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. Such product labeling information shall not be boxed and shall not contain the statement provided in paragraph (c)(2)(i) of this section.

* * * * *

(g) The labeling for all drugs contains the general warning: ''Keep out of reach of children (highlighted in bold type).'' The labeling of drugs shall also state as follows: For drugs used by oral administration, ''In case of overdose, get medical help right away;'' for drugs used topically, rectally, or vaginally and

not intended for oral ingestion, ''If swallowed, get medical help right away;'' for drugs used topically and intended for oral use, ''If more than used for * * * is accidentally swallowed, get medical help right away.'' * * *

* * * * *

(i) The following terms may be used interchangeably in any of the labeling for OTC drug products provided such use does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation.

(1) ''Aggravate(s)'' or ''makes(s) * * * worse''.

(2) ''Ask'' or ''consult'' or ''contact''.

(3) ''Asking'' or ''consulting''.

(4) ''Assistance'' or ''help'' or ''aid''.

(5) ''Avoid contact with eyes'' or ''do not get into eyes''.

(6) ''Avoid inhaling'' or ''do not inhale''.

(7) ''Before a doctor is consulted'' or ''without first consulting your doctor'' or ''consult your doctor before * * *'' or ''unless first told to do so by a doctor''.

(8) ''Clean'' or ''cleanse''.

(9) ''Consulting'' or ''advising''.

(10) ''Continue(s)'' or ''persist(s)'' or ''do(es) not go away'' or ''last(s)''.

(11) ''Discard'' or ''throw away''.

(12) ''Discontinue * * *'' or ''stop * * *'' or ''quit * * *''.

(13) ''Doctor'' or ''physician''.

(14) ''Exceed'' or ''use more than'' or ''go beyond''.

(15) ''Exceed recommended dosage'' or ''use more than directed''.

(16) ''Excessive'' or ''too much''.

(17) ''Give to'' or ''use in''.

(18) ''Immediately'' or ''right away'' or ''directly''.

(19) ''Immediately'' or ''as soon as''.

(20) ''Immediately following * * *'' or ''right after''.

(21) ''Improve(s)'' or ''get(s) better'' or ''make(s) better''.

(22) ''Indication(s)'' or ''Use(s)''.

(23) ''Instill'' or ''put in (quantity) drop by drop''.

(24) ''Is (are) accompanied by'' or ''you also have'' (in context only) or ''occur(s) with''.

(25) ''Is persistent'' or ''continues'' or ''does not go away'' or ''lasts''.

(26) ''Lung'' or ''pulmonary''.

(27) ''Medication'' or ''drug''.

(28) ''Not to exceed'' or ''not more than''.

(29) ''Obtain(s)'' or ''get(s)''.

(30) ''Perforation of'' or ''hole in''.

(31) ''Persistent'' or ''that does not go away'' or ''that continues'' or ''that lasts''.

(32) ''Presently'' or ''now''.

(33) ''Take'' or ''use''.

(34) ''Tend(s) to recur'' or ''come(s) back''.

(35) ''To avoid contamination'' or ''avoid contamination'' or ''do not contaminate''.

(36) ''Unless directed by a [the child's] doctor'' or ''except under the advice of a [the child's] doctor'' or ''unless told to do so by a [the child's] doctor''.

(37) ''Worsen(s)'' or ''get(s) worse'' or ''make(s) worse''.

* * * * *

(k) The following connecting terms may be deleted from the labeling of OTC drug products provided such deletion does not alter the meaning of the labeling that has been established and identified in an applicable monograph or by regulation:

(1) ''And''.

(2) ''As may occur with''.

(3) ''Associated with''.

(4) ''Consult a doctor''.

(5) ''Discontinue use''.

(6) ''Due to''.

(7) ''If this occurs''.

(8) ''Or''.

(9) ''Occurring with''.

(10) ''Such as''.

(11) ''While taking this product''.

(12) ''Within''.

(13) ''Unless directed by a doctor''.

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

8. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

9. Section 358.650 is amended in paragraph (d)(1) by revising the information in the brackets to read as follows:

§ 358.650 Labeling of pediculicide drug products.

* * * * *

(d) * * *

(1) * * * [sentence in boldface type].

* * * * *

Dated: December 20, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendix will not appear in the Annual Code of Federal Regulations.

BILLING CODE 4160–01–F

Appendix A.—Examples of Prototype OTC Drug Poducts Labeling

Example 1

Example of Proposed Headings*

Active Ingredient (In Each Tablet) **Purpose**
XXXXXXXXXXX **Xmg** XXXXXXXXX

Use:
- XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Warnings

Do Not Use:
- XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
  XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
  XXXXXXXXXXXXXXX

Ask a Doctor Before Use
If You Have:
- XXXXXXXXXXXXXXX

If You Are:
- XXXXXXXXXXXXXXX

When Using This Product:
- XXXXXXXXXXXXXXX

Stop Using This Product If:
- XXXXXXXXXXXXXXX
  Ask a doctor. These may be signs of a serious condition.

If pregnant or breast-feeding, ask a health professional before use. **Keep out of reach of children.** In case of overdose, get medical help right away.

Directions:
- XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

* Note: Headings are in 8 point type, text is in 6 point type

Example 2

Chlorpheniramine Maleate Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

Active Ingredient (In Each Tablet) **Purpose**
Chlorpheniramine Maleate 4 mg..... Antihistamine

Uses: for the temporary relief of these symptoms of hay fever
▶ sneezing ▶ runny nose ▶ itchy, watery eyes

Warnings

Ask a Doctor Before Use
If You Have:
▶ glaucoma
▶ a breathing problem such as emphysema or chronic bronchitis
▶ difficulty in urination due to enlargement of the prostate gland

If You Are:
▶ taking sedatives or tranquilizers

When Using This Product:
▶ marked drowsiness may occur
▶ alcohol, sedatives, and tranquilizers may increase the drowsiness effect
▶ avoid alcoholic beverages
▶ use caution when driving a motor vehicle or operating machinery
▶ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Directions:

Adults and children over 12 years:	Take 1 tablet every 4 to 6 hours as needed. Do not take more than 6 tablets in 24 hours.
Children 6 to under 12 years:	Take 1/2 tablet every 4 to 6 hours as needed. Do not take more than 3 tablets in 24 hours.
Children under 6 years:	Ask a doctor.

* Note: Headings are in 8 point type, text is in 6 point type

Example 3

Cough/Cold Product Labeling Using Proposed Specifications*
[Based on applicable monographs]

Active Ingredients (In Each Tablet)	**Purposes**
Chlorpheniramine Maleate 2 mg	Antihistamine
Dextromethorphan 15 mg	Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg	Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
- sneezing
- runny nose
- nasal congestion, stuffiness
- cough

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.

Ask a Doctor Before Use

If You Have:
- heart disease
- excessive phlegm (mucous)
- glaucoma
- high blood pressure
- thyroid disease
- diabetes
- a breathing problem such as emphysema or chronic bronchitis
- difficulty in urination due to enlargement of the prostate gland
- persistent or chronic cough such as occurs with smoking, asthma, or emphysema
- cough with fever, rash, or persistent headache

If You Are: taking sedatives or tranquilizers

When Using This Product:
- marked drowsiness may occur
- alcohol, sedatives, and tranquilizers may increase the drowsiness effect
- avoid alcoholic beverages
- use caution when driving a motor vehicle or operating machinery
- excitability may occur, especially in children

Stop Using This Product If:
- nervousness, dizziness, or sleeplessness occurs
- cough is accompanied by fever, rash, or persistent headache
- nasal congestion does not improve in 7 days

Ask a doctor. These may be signs of a serious condition.

If pregnant or breast-feeding, ask a health professional before use.

Keep out of reach of children. In case of overdose, get medical help right away.

Directions:
- Do not exceed recommended dosage.
- Adults and children over 12 years of age: Take 2 tablets every 6 hours as needed. Do not take more than 8 tablets in 24 hours.
- Children under 12 years of age: Ask a doctor.

* Note: Headings are in 6 point type, text is in 6 point type

Example 4

Cough/Cold Product Labeling Using Proposed Specifications*
[Based on applicable monographs]

Active Ingredients (In Each 5ml = 1 teaspoonful) **Purposes**
Chlorpheniramine Maleate 2 mg..... Antihistamine
Dextromethorphan 15 mg..... Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg..... Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
• sneezing • runny nose • nasal congestion, stuffiness • cough

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.

Ask a Doctor Before Use
If You Have:
• heart disease • excessive phlegm (mucous) • glaucoma
• high blood pressure • thyroid disease • diabetes
• a breathing problem such as emphysema or chronic bronchitis
• difficulty in urination due to enlargement of the prostate gland
• persistent or chronic cough such as occurs with smoking, asthma, or emphysema
• cough with fever, rash, or persistent headache
If You Are: taking sedatives or tranquilizers
When Using This Product:
• marked drowsiness may occur
• alcohol, sedatives, and tranquilizers may increase the drowsiness effect
• avoid alcoholic beverages
• use caution when driving a motor vehicle or operating machinery
• excitability may occur, especially in children
Stop Using This Product If:
• nervousness, dizziness, or sleeplessness occurs
• cough is accompanied by fever, rash, or persistent headache
• nasal congestion does not improve in 7 days
Ask a doctor. These may be signs of a serious condition.
If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Directions:
• Do not exceed recommended dosage.
• Adults and children over 12 years of age: Take 2 teaspoonsful every 6 hours as needed. Do not take more than 8 teaspoonsful in 24 hours.
• Children under 12 years of age: Ask a doctor.

Cough/Cold Syrup

* Note: Headings are in 6 point type, text is in 6 point type

Example 5

Topical Acne Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

Active Ingredients	**Purpose**
Resorcinol 2% Sulfur 5%	Acne Medication Cream

Uses:
- for the treatment of acne
- dries up acne pimples
- helps prevent new acne blemishes

Warnings

Do Not Use: on broken skin or apply to large areas of the body

When Using This Product:
- do not get into eyes
- using other topical acne medications at the same time or right after using this product may increase dryness or irritation of the skin. Only one medication should be used unless directed by a doctor
- apply to affected areas only

Stop Using This Product If: excessive skin irritation develops or increases **Ask a doctor. This may be a sign of a serious condition.**

For external use only.

Keep out of reach of children. If swallowed, get medical help right away.

Directions:
- Clean the skin throughly before applying drug.
- Cover the entire affected area with a thin layer one to three times daily.
- Because excessive drying of the skin may occur, start with one application daily, then gradually increase to two to three times daily if needed or as directed by a doctor.
- If bothersome drying or peeling occurs, reduce application to once a day or every other day.

* Note: Headings are in 6 point type, text is in 6 point type

Example 6

Stannous Flouride Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

Active Ingredient **Purpose**
Stannous Flouride 0.4% ..... Anticavity Flouride Preventive Treatment Gel

Use: Aids in the prevention of dental decay.

Warnings

Keep out of reach of children. If more than used for brushing is accidentally swallowed, get medical help right away.

Directions:
- Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste.
- Apply the gel to your teeth and brush thoroughly.
- Allow the gel to remain on your teeth for 1 minute and then spit out.
- Do not swallow the gel.
- Do not eat or drink for 30 minutes after brushing.
- Instruct children under 12 years of age in good rinsing habits (to minimize swallowing).
- Supervise children as necessary until capable of using without supervision.
- Children under 6 years of age: Consult a dentist or doctor.

Other Information:
- This is a flouride preventive treatment gel, not a toothpaste.
- Read directions carefully before using.
- This product may produce surface staining of the teeth.
- Adequate tooth brushing may prevent these stains which are not harmful or permanent and may be removed by your dentist.
- The combined daily use of a flouride preventive treatment gel and a flouride toothpaste can help reduce the incidence of dental cavities.

Inactive Ingredients: Anhydrous glycerin, (names of other inactive ingredients listed in order of predominance in the product)

* Note: Headings are in 6 point type, text is in 6 point type

Example 7

Chlorpheniramine Maleate Product Labeling Using Proposed Specifications*
[Based on applicable monograph]

FDA Approved Information:

Active Ingredient (In Each Tablet)	**Purpose**
Chlorpheniramine Maleate 4 mg	Antihistamine

Uses: for the temporary relief of these symptoms of hay fever

▶ sneezing ▶ runny nose ▶ itchy, watery eyes

Warnings

Ask a Doctor Before Use

If You Have:

- ▶ glaucoma
- ▶ a breathing problem such as emphysema or chronic bronchitis
- ▶ difficulty in urination due to enlargement of the prostate gland

If You Are:

- ▶ taking sedatives or tranquilizers

When Using This Product:

- ▶ marked drowsiness may occur
- ▶ alcohol, sedatives, and tranquilizers may increase the drowsiness effect
- ▶ avoid alcoholic beverages
- ▶ use caution when driving a motor vehicle or operating machinery
- ▶ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Directions:

Adults and children over 12 years:	Take 1 tablet every 4 to 6 hours as needed. Do not take more than 6 tablets in 24 hours.
Children 6 to under 12 years:	Take 1/2 tablet every 4 to 6 hours as needed. Do not take more than 3 tablets in 24 hours.
Children under 6 years:	Ask a doctor.

Inactive Ingredients:

Questions: 1-800-555-1234

3 123456789 9

* Note: Headings are in 6 point type, text is in 6 point type

Example 8

Cough/Cold Product Labeling Using Proposed Specifications*
Except that Directions are Listed Before Warnings
[Based on applicable monographs]

Active Ingredients (In Each Tablet)	Purposes
Chlorpheniramine Maleate 2 mg	Antihistamine
Dextromethorphan 15 mg	Cough Suppressant
Pseudoephedrine Hydrochloride 30 mg	Nasal Decongestant

Uses: for the temporary relief of these cold symptoms
- sneezing
- runny nose
- nasal congestion, stuffiness
- cough

Directions:
- Do not exceed recommended dosage.
- Adults and children over 12 years of age: Take 2 tablets every 6 hours as needed. Do not take more than 8 tablets in 24 hours.
- Children under 12 years of age: Ask a doctor.

Warnings

Do Not Use: this product if you are now taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you are uncertain whether your prescription drug contains an MAOI, ask a health professional.

Ask a Doctor Before Use

If You Have:
- heart disease
- excessive phlegm (mucous)
- glaucoma
- high blood pressure
- thyroid disease
- diabetes
- a breathing problem such as emphysema or chronic bronchitis
- difficulty in urination due to enlargement of the prostate gland
- persistent or chronic cough such as occurs with smoking, asthma, or emphysema
- cough with fever, rash, or persistent headache

If You Are: taking sedatives or tranquilizers

When Using This Product:
- marked drowsiness may occur
- alcohol, sedatives, and tranquilizers may increase the drowsiness effect
- avoid alcoholic beverages
- use caution when driving a motor vehicle or operating machinery
- excitability may occur, especially in children

Stop Using This Product If:
- nervousness, dizziness, or sleeplessness occurs
- cough is accompanied by fever, rash, or persistent headache
- nasal congestion does not improve in 7 days

Ask a doctor. These may be signs of a serious condition.

If pregnant or breast-feeding, ask a health professional before use.

Keep out of reach of children. In case of overdose, get medical help right away.

* Note: Headings are in 6 point type, text is in 6 point type

Example 9

Chlorpheniramine Maleate Product Labeling Using Proposed Specifications*
Except that the Order is Different
[Based on applicable monograph]

Uses: for the temporary relief of these symptoms of hay fever
▶ sneezing ▶ runny nose ▶ itchy, watery eyes

Directions:

Adults and children over 12 years:	Take 1 tablet every 4 to 6 hours as needed. Do not take more than 6 tablets in 24 hours.
Children 6 to under 12 years:	Take 1/2 tablet every 4 to 6 hours as needed. Do not take more than 3 tablets in 24 hours.
Children under 6 years:	Ask a doctor.

Warnings

Ask a Doctor Before Use

If You Have:
- ▶ glaucoma
- ▶ a breathing problem such as emphysema or chronic bronchitis
- ▶ difficulty in urination due to enlargement of the prostate gland

If You Are:
- ▶ taking sedatives or tranquilizers

When Using This Product:
- ▶ marked drowsiness may occur
- ▶ alcohol, sedatives, and tranquilizers may increase the drowsiness effect
- ▶ avoid alcoholic beverages
- ▶ use caution when driving a motor vehicle or operating machinery
- ▶ excitability may occur, especially in children

If pregnant or breast-feeding, ask a health professional before use.
Keep out of reach of children. In case of overdose, get medical help right away.

Active Ingredient (In Each Tablet)	Purpose
Chlorpheniramine Maleate 4 mg	Antihistamine

* Note: Headings are in 8 point type, text is in 6 point type

[FR Doc. 97–4596 Filed 2–26–97; 8:45 am]
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federal register

Thursday
February 27, 1997

Part III

The President

Proclamation 6973—American Red Cross Month, 1997

Federal Register
Vol. 62, No. 39
Thursday, February 27, 1997

Presidential Documents

Title 3—

The President

Proclamation 6973 of February 24, 1997

American Red Cross Month, 1997

By the President of the United States of America

A Proclamation

Founded over a century ago by Clara Barton, the American Red Cross has evolved from a branch of the International Red Cross into a uniquely American institution, serving our Nation in peace and in war, and through countless natural disasters. Since the Spanish-American War, when the first volunteers brought emergency first-aid and news from home to wounded soldiers, generations of Americans have followed in this grand tradition of service.

Today, in communities across our Nation, a million and a half volunteers stand ready to help their neighbors at a moment's notice. Last year, Red Cross paid and volunteer staff assisted disaster victims across the country by opening more than 3,200 shelters and giving comfort to 172,000 people. The Red Cross also reached 16 million Americans through health and safety courses, including HIV and AIDS education and community outreach programs; collected more than 6 million units of lifesaving blood to keep our national blood supply ready, strong, and safe; and provided immediate counseling and support to the bereaved families of the victims of TWA Flight 800 and ValuJet Flight 592.

Overseas, American Red Cross workers provided emergency communications for our troops in Bosnia; worked with foreign Red Cross societies to rebuild the lives of civilian refugees in places such as the former Yugoslavia and Rwanda; and provided personnel, financial aid, and gifts of goods and services to the victims of international disasters and armed conflicts in every corner of the globe.

Since 1881, the size, scope, and complexity of major disasters have placed an ever-greater demand on the resources of the Red Cross. Yet, the generosity of our citizens has enabled the American Red Cross to continue to fulfill its humanitarian mission, providing assistance to those in need and easing suffering around the world. We must continue this tradition, and, in the spirit of service, support this voluntary agency because it truly belongs to all Americans. Each of us can help keep the American Red Cross strong through our donations of time, money, and blood.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1997 as American Red Cross Month. I urge all the people of the United States to support the humanitarian work of their local Red Cross chapters by volunteering and participating in Red Cross blood drives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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federal register

Thursday
February 27, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Pratt & Whitney Canada PT6 Series Turboprop Engines; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–01; Amendment 39–9936; AD 97–04–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6 Series Turboprop 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 Pratt & Whitney Canada (PWC) PT6 series turboprop engines. This action requires a one-time visual inspection of compressor bleed-off valves (BOVs) to determine if an affected supplier's code number is on the cover; and, if so, this AD requires the removal of the bleed valve cover assembly from the compressor bleed valve housing assembly and inspection of the cotter pin and the guide shaft pin. If the cotter pin or guide shaft pin is not acceptable, this AD requires modifying the compressor BOV or replacing it with a serviceable part. This amendment is prompted by reports of two malfunctions of compressor BOVs that resulted in inflight engine power reduction. The actions specified in this AD are intended to prevent engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft.

DATES: Effective March 14, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 14, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–01, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Pratt & Whitney Canada (PWC) PT6 series turboprop engines installed on single engine aircraft. Transport Canada advises that it has received reports of two malfunctions of compressor bleed-off valves (BOVs) on PWC PT6A–25C series engines, resulting in inflight engine power reduction. The investigation revealed that the cause of the compressor BOV malfunction was broken cotter pins. The debris from the cotter pins interfered with the movement of the BOV piston, which resulted in the BOV remaining in the closed position. The cotter pins broke due to stress loading from the guide shaft pin, which was improperly installed and loose. Further investigation indicates the compressor BOVs from the two malfunctions are from the same supplier. All BOVs produced from this supplier, which is approximately 1,000 compressor BOVs since January 1995, are the suspect population. The compressor BOVs are common to all PWC PT6 series engine models. This condition, if not corrected, could result in engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft.

Pratt & Whitney Canada has issued the following Service Bulletins (SBs): 14251, Revision 1, dated December 2, 1996; 13287, Revision, dated December 2, 1996; 12134, Revision 1, dated December, 1996; 4204, dated December 10, 1996, Original; 3344, Revision 1, dated December 3, 1996; and 1538, Revision 3, dated December 2, 1996. The SBs describe procedures for visually inspecting BOVs to determine if the affected supplier's code number (No.) is on the cover. If the code No. is present, the SB describes the procedures for the removal of the bleed valve cover assembly from the bleed valve housing assembly, the inspection of the cotter pin and the guide shaft pin, the installation of a new compressor valve cover assembly if necessary, the reassembly of the bleed valve cover assembly to the bleed valve assembly, and the reidentification of the bleed valve assembly. Transport Canada classified these SBs as mandatory and issued Emergency AD CF–96–24, which is applicable to all PT6A engines installed in single engine aircraft, in order to assure the airworthiness of these engines in Canada.

This engine model is manufactured in Canada and is 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, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require, within 100 hours time in service after the effective date of this AD, but no later than April 2, 1997, a one-time visual inspection of compressor BOVs to determine if the affected supplier's code No. 8070, is on the cover. No further action is required if code No. 8070 is not on the cover, or if the compressor BOV has been marked with the reidentification ''RE71'' adjacent to the part number. If code No. 8070 is found and the compressor BOV has not been marked for reidentification, this AD requires inspecting the cotter pin for any wear indications and the guide shaft pin for any movement described in the applicable SB. If the cotter pin or guide shaft pin is not acceptable, this AD requires, prior to further flight, modifying the compressor BOV or replacing it with a serviceable part. If the conditions of the cotter pin and the guide shaft pin are acceptable, this AD requires the replacement of the cotter pin, and the reidentification of the bleed valve assembly in accordance with the PW SB. The calendar end-date of April 2, 1997, was determined based upon safety considerations and parts availability. The actions would be required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–01.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–04–12 Pratt & Whitney Canada: Amendment 39–9936. Docket 97–ANE–01.

Applicability: Pratt & Whitney Canada (PWC) PT6 series turboprop engines manufactured after January 1, 1995, or any PT6 series engines that have had their compressor bleed-off valve (BOV) changed after January 1, 1995, and which are installed in single-engine aircraft including, but not limited to the following aircraft: Air Tractor AT, Ayres Turbo Thrush Commander, Cessna 208 Caravan, Argo Aircraft G169B, Embraer EMB–312 Tucano, Frakes AF–CAT, Pilatus PC–6, PC–7, PC–9, and PC–12, Schweitzer AG–CAT, Aerospatiale Socata TBM–700, and Raytheon (Beech) T–34C.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power reduction due to malfunction of the compressor BOV, which could result in a forced landing and loss of the aircraft, accomplish the following:

(a) Within 100 hours time in service (TIS) after the effective date of this AD, but no later than April 2, 1997, perform a visual inspection of compressor BOVs to determine if the affected supplier's code number (No.) 8070, is on the cover, in accordance with the following PWC Service Bulletins (SBs), as applicable: 14251, Revision 1, dated December 2, 1996; 13287, Revision 1, dated December 2, 1996; 12134, Revision 1, dated December 2, 1996; 4204, dated December 10, 1996, Original; 3344, Revision 1, dated December 3, 1996; and 1538, Revision 3, dated December 2, 1996.

(b) No further action is required if code No. 8070 is not on the cover of the compressor BOV, or if the compressor BOV has been marked with the reidentification ''RE71'' adjacent to the part number.

(c) For compressor BOVs with code No. 8070 and no reidentification ''RE71'' marking, prior to further flight remove and inspect the cotter pin for any wear indications and inspect the guide shaft pin for any movement in accordance with the applicable SB listed in paragraph (a) of this AD.

(1) If the cotter pin or guide shaft pin is not acceptable in accordance with the applicable SB listed in paragraph (a) of this AD, prior to further flight, modify the compressor BOV in accordance with the applicable SB listed in paragraph (a) of this AD, or replace it with a serviceable part.

(2) If the cotter pin and the guide shaft pin are acceptable in accordance with the applicable SB listed in paragraph (a) of this AD, prior to further flight, replace the cotter pin with a serviceable part.

(d) Assemble and install the compressor bleed valve cover assembly on the housing assembly and reidentify the bleed valve assembly with ''RE71'' in accordance with the applicable SB listed in paragraph (a) of this AD.

(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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Certification Office.

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

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

(g) The actions required by this AD shall be accomplished in accordance with the following PWC SBs:

Document No.	Pages	Revision	Date
14251	1–9	1	December 2, 1996.
Total pages: 9.			
13287	1–11	1	December 2, 1996.
Total pages: 11.			
12134	1–8	1	December 2, 1996.
Total pages: 8.			
4204	1–11	Original	December 10, 1996.
Total pages: 11.			
3344	1–11	1	December 3, 1996.
Total pages: 11.			
1538	1–9	3	December 2, 1996.
Total pages: 9.			

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 Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 14, 1997.

Issued in Burlington, Massachusetts, on February 18, 1997.

James C. Jones,

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

[FR Doc. 97–4993 Filed 2–26–97; 9:21 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Jersey; published 1-27-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Spinosad; published 2-26-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Sunscreen drug products (OTC)--

Tentative final monograph amendment; correction; published 2-26-97

NATIONAL TRANSPORTATION SAFETY BOARD

Accident/incident investigation procedures; published 1-27-97

TENNESSEE VALLEY AUTHORITY

TVA power securities issued through Federal Reserve Banks; book-entry procedures

Correction; published 2-26-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 1-27-97

TREASURY DEPARTMENT

Customs Service

Customs bonds:

Softwood lumber shipments; entry from Canada; published 2-26-97

TREASURY DEPARTMENT

Thrift Supervision Office

Uniform Financial Institutions Rating System (CAMEL rating system); conforming amendments; published 1-27-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton and research promotion order:

Import assessment exemptions; automatic provisions adjustment; comments due by 3-3-97; published 1-31-97

Eggs and egg products and poultry and rabbit products; inspection and grading:

Fees and charges increase; comments due by 3-3-97; published 1-31-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Exotic Newcastle Disease; disease status change--

Costa Rica; comments due by 3-3-97; published 12-31-96

Pork and pork products from Mexico transiting United States; comments due by 3-3-97; published 12-31-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Hybrid corn seed; comments due by 3-3-97; published 1-2-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries--

Summer flounder, scup, and black sea bass; comments due by 3-7-97; published 2-5-97

DEFENSE DEPARTMENT

Acquisition regulations:

Independent research and development/bid and proposal costs for 1996 FY and beyond; comments due by 3-4-97; published 1-3-97

Federal Acquisition Regulation (FAR):

Automatic data processing equipment leasing costs; comments due by 3-3-97; published 12-31-96

Contract cost principles and procedures; foreign differential pay; comments due by 3-3-97; published 12-31-96

Contract modifications; comments due by 3-3-97; published 12-31-96

Contractor personnel compensation; comments due by 3-3-97; published 1-2-97

Year 2000 procurement issues; awareness and compliance; comments due by 3-3-97; published 1-2-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national--

Sulfur oxide (sulfur dioxide); comments due by 3-3-97; published 1-2-97

Air quality implementation plans; approval and promulgation; various States:

Colorado; comments due by 3-3-97; published 1-30-97

Delaware; comments due by 3-7-97; published 2-5-97

Massachusetts; comments due by 3-3-97; published 1-30-97

Toxic substances:

Significant new uses--

Aliphatic ester; comments due by 3-6-97; published 2-4-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Tennessee; comments due by 3-3-97; published 1-30-97

Texas; comments due by 3-3-97; published 1-17-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor personnel compensation; comments due by 3-3-97; published 1-2-97

Year 2000 procurement issues; awareness and compliance; comments due by 3-3-97; published 1-2-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Vaginal contraceptive products (OTC); comments due by 3-4-97; published 12-19-96

Medical devices:

Radiology devices; proposed classification--

Medical image management; comments due by 3-3-97; published 12-2-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Fair housing:

Residential real estate-related lending transactions and compliance with FairHousing Act; lender-initiated self-testing; comments due by 3-3-97; published 1-31-97

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Management, use, and protection of public lands

Criminal law enforcement provisions; consolidation; comments due by 3-7-97; published 1-17-97

Minerals management:

Leasing of solid minerals other than coal and oil shale; Federal regulatory review; comments due by 3-7-97; published 2-5-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alexander Archipelago wolf and Queen Charlotte goshawk; status review; comments due by 3-5-97; published 2-14-97

Chinese Camp brodiaea, etc. (ten plants from foothills of Sierra Nevada Mountains); comments due by 3-6-97; published 2-4-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Maryland; comments due by 3-3-97; published 1-30-97

Pennsylvania; comments due by 3-3-97; published 1-30-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor personnel compensation; comments due by 3-3-97; published 1-2-97

Year 2000 procurement issues; awareness and compliance; comments due by 3-3-97; published 1-2-97

PERSONNEL MANAGEMENT OFFICE

Intergovernmental Personnel Act programs:

Personnel administration; merit system standards; comments due by 3-5-97; published 2-3-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income and social security benefits:

Aged, blind, and disabled, and Federal old age, survivors and disability insurance--

Claimant representatives; conflict of interests; comments due by 3-4-97; published 1-3-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Single-engine aircraft; commercial passenger-carrying operations under instrument flight rules

Extension of comment period; comments due by 3-3-97; published 2-7-97

Air craft and air traffic operating and flight rules, etc.:

Domestic, flag, supplemental commuter, and on-demand operations-

Editorial corrections; comments due by 3-5-97; published 2-3-97

Airworthiness directives:

Airbus; comments due by 3-4-97; published 1-27-97

Boeing; comments due by 3-3-97; published 1-2-97

Cessna; comments due by 3-7-97; published 1-6-97

Construcciones Aeronauticas, S.A.; comments due by 3-3-97; published 1-27-97

Fairchild; comments due by 3-6-97; published 1-17-97

Short Brothers plc; comments due by 3-7-97; published 1-27-97

Williams International, L.L.C.; comments due by 3-7-97; published 1-6-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Dual fueled electric passenger automobiles; minimum driving range; comments due by 3-4-97; published 1-3-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Distilled spirits, wine, and malt beverages; labeling and advertising--

Margarita; use of term; comments due by 3-7-97; published 2-20-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Depreciation alocations; recapture among partners in a partnership; comments due by 3-6-97; published 12-12-96